

# INTEGRATED COASTAL MANAGEMENT BILL

**20 November 2007**

- » *“The coast contributes 35% of the country’s GDP”*
- » *World-wide 60% of the population resides along coast*
- » *There are challenges along the coast not adequately dealt with in the past which this Bill seeks to address*
- » *Bill sets a new approach to managing coastal resources to promote social equity and best economic use, while protecting the environment*
  - *Integrated management of the coastal zone*
  - *Framework for management of activities in the coastal zone*



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# THE CHALLENGES

## ***“Coastal processes ignored”***

- » *Natural coastal processes (wind, waves, currents) results in sediment movement, eg erosion, wind-blown sand, along the coast*
- » *Climate change/sea level rise*
- » *Planning and developments did not adequately consider these processes in the past e.g.:*
  - *Erosion along coast e.g. at Langebaan & St Francis*
  - *Storm damage along KZN coast*
  - *Wind-blown sand*



# STORM DAMAGE KZN NORTH COAST





# STORM DAMAGE KZN NORTH COAST



# STORM DAMAGE MARGATE KZN





# WIND-BLOWN SAND WITSAND WC



# DEVELOPMENT BELOW 1: 50 YR FLOOD LINE: SOUTHERN CAPE



# THE SOLUTIONS

## “Coastal process considered”

*Bill:*

» *Requires that planning and EIA's take coastal processes into account, e.g.*

- *Sea level rise*
- *Erosion-prone coasts*
- *Flood plains*
- *Wind-blown sand (s63 (2)(e))*

» *Mechanisms employed by Bill includes:*

- *Demarcation of coast (see diagramme) Chapter 2 (ss 7 - 25)*
- *Adjust zone boundaries according to sensitivities of coast (not private property boundaries) (s26 - 29)*
- *Set-back lines (s25)*
- *Control of certain activities via stricter EIA's (s63)*



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# THE CHALLENGES

## *“Coastal access denied”*

- » *Limited access to the coast caused by*
  - *Farm land*
  - *Property developments, e.g. golf estates*
  - *Mining areas*
  - *Residential owners “closing” existing access servitudes*



# ACCESS DENIED



# THE SOLUTIONS

## ***“Improve access to coast”***

*Bill:*

- *Ensures existing access points and access strips over land (servitudes) are reinstated (s18 - 20)*
- *Requires Municipalities to demarcate access land, sign-post access points and properly maintain (s20 & 29)*
  - *To coast*
  - *Along coast (e.g. over cliff-top)*
- *Enables expropriation, only if: (s9 & s18)*
  - *Owner refuse to allow access strip (servitude)*
  - *No existing access in general area*



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# ACCESS PROVIDED OVER STATE LAND, PE, EASTERN CAPE (SPWP)





# POLLUTION, CAPE TOWN WC



Cape Town, Western Cape

# THE CHALLENGES

## ***“Pollution not adequately controlled”***

- » *Pollution challenges stem from discharge of untreated and/or inadequately treated waste water into:*
  - *Sensitive coastal areas*
  - *Predominantly near-shore areas*
- » *Inadequate control over incineration & dumping at sea*
- » *Impact on environment, tourism, health and development (e.g. aquaculture)*





# FISH FACTORY OUTFALL, WC



Western Cape

# THE SOLUTIONS

## ***“Control pollution”***

Bill:

- » Requires all existing waste disposal pipelines (sea outfalls) to be assessed (s69(9))
- » Requires strict control over new sea outfalls, e.g.(s69)
  - Sewage and industrial outfalls
  - Fish factories
  - Aquaculture outlets
- » Clarifies roles of DEAT and DWAF in pollution management
- » Aligns legislation with international best practice, e.g.
  - Dumping at sea (s70 - 72)
  - Prohibiting incineration (s70)



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# THE CHALLENGES

## ***“Planning & decision-making fragmented”***

- » *Planning and decision-making has been sectoral, e.g.:*
  - *Sewage or bloody water outfalls constructed next to hotels and Blue Flag beaches*
  - *Development allowed in flood-prone areas (Mercedes Benz picture)*
  - *Development allowed in areas subject to coastal erosion (KZN Coast pictures)*
- » *Planning usually stops at the high water mark*



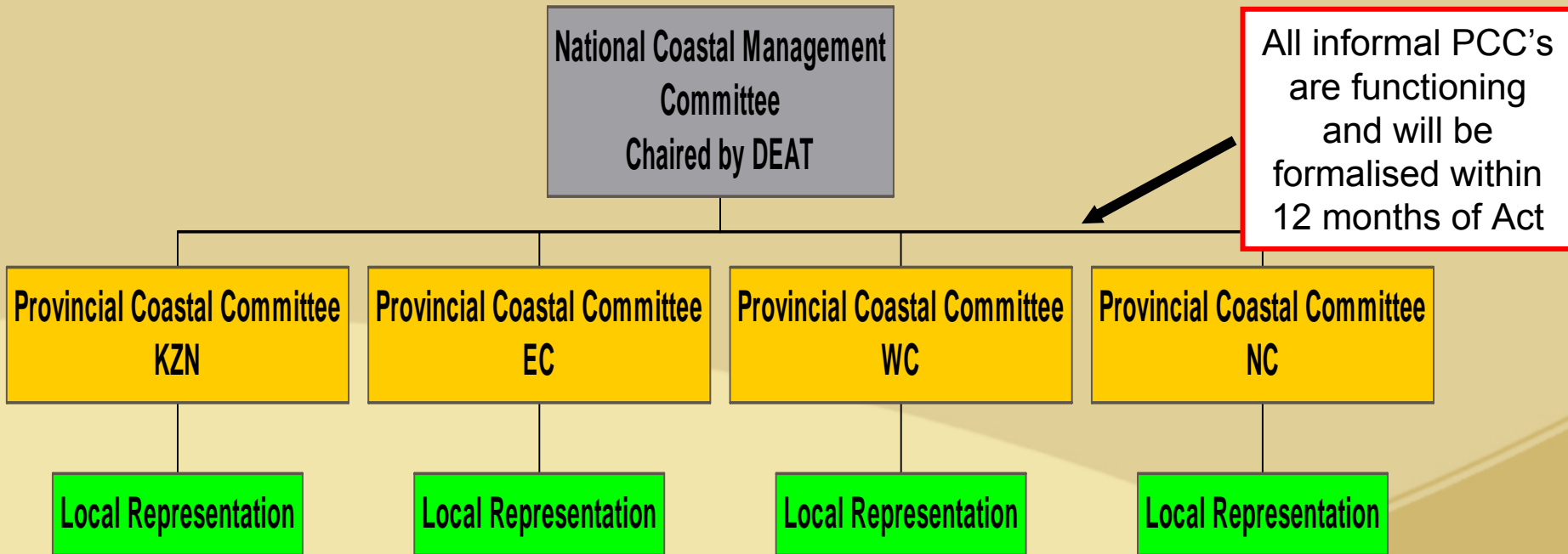


# THE SOLUTIONS

## “Integrated planning & decision-making”

*Bill:*

- » Creates an integrated (non-sectoral) institutional framework
- » Wide representivity (Ch 5: ss 35-43)



Some informal regional and local CC's are already functioning



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# THE SOLUTIONS

## *“Integrated planning & decision-making”*

BILL REQUIRES COASTAL MANAGEMENT PROGRAMMES

NATIONAL  
COASTAL MANAGEMENT PROGRAMME



PROVINCIAL COASTAL  
MANAGEMENT PROGRAMMES



MUNICIPAL COASTAL  
MANAGEMENT PROGRAMMES

Wide participation results in agreement on e.g.:

- Common vision
  - Objectives
  - Priorities
  - Strategies
  - Norms and standards
  - Indicators
- (Ch 6 ss 44 – 55)



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# THE CHALLENGES

## ***“Inadequate control over activities affecting the coast”***

- » Activities along coast causes environmental damage, e.g.
  - Damage to dunes
  - Agricultural activities, e.g.
    - Clearing of land/indigenous vegetation
    - Draining of wetlands
    - Abstraction of water affecting estuaries
- » Development activities along the coast not properly managed (EIA’s focus too narrow) e.g.
  - Erecting structures and infrastructure in inappropriate areas, e.g.
    - Sea walls, harbours and piers
    - Car parks and access roads
    - Resorts







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# CONSULTATION PROCESS

Cabinet approved that Bill be released for public comment for 90 days in December 2006.

A concerted effort was made to inform the general public and stakeholders and to elicit their response. This included:

- » Announcement and interviews by Minister at St Francis Bay coastal erosion inspection
- » Press release by Minister
- » Press releases, adverts & posters that indicated details of information sessions
- » Radio interviews in Xhosa, Zulu, Afrikaans and English
- » Production of a user-friendly guide in the four coastal languages
- » Loading the Bill, White Paper, user-friendly guides, information session details and general coastal management documents on the DEAT and MCM websites
- » Distribution of information and invites electronically to stakeholders
- » Dedicated provincial coastal committee meetings to discuss ICM Bill
- » Sending out user-friendly guides and invitations to all coastal authorities
- » Some 30 information sharing sessions were undertaken along the coast
- » Articles in newsletters
- » etc





# COMMENTS RECEIVED

A total of some **350 pages** of comments were received from **>100 respondents** representing the following stakeholder groupings (numbers in brackets indicate the number of responses):

- » Business and Industry (12)
- » Consultants (17)
- » Environmental Groups (17)
- » General Public (27)
- » Legal Profession (2)
- » Property Owners Association (4)
- » Research Institutions (8)
- » Statutory Bodies (8)
- » Local Government (4)
- » Provincial Government (4)
- » National Government (5)

- 1) The over-whelming response was extremely positive.
- 2) Detailed comments were considered and where appropriate changes incorporated.
- 3) SLA checked and certified revised ICM Bill.



# CHAPTERS OVERVIEW & KEY CLAUSES

## Chapter 1: Objectives and application of the Act

Chapter 1 deals with the objectives and application of the Act

» It includes the following sections. Key clauses are covered in specific slides below (summarised, but full text available as “hidden” slides if needed):

1. Definitions
2. Objects of Act
3. State’s duty to fulfil environmental rights in coastal environment
4. Application of Act
5. Application of National Environmental Management Act
6. Conflicts with other legislation



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# Objects of Act

2. The objects of this Act are—

- (a) to determine the coastal zone of the Republic;
- (b) to provide for the co-ordinated and integrated management of the coastal zone by all spheres of government;
- (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;
- (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



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# State's duty to fulfil environmental rights in coastal environment

3. In fulfilling the rights contained in section 24 of the Constitution, the State—
- (a) must act as the **trustee of the coastal zone**; and
  - (b) must, take reasonable measures to achieve the progressive realisation of those rights **in the interests of every person**.





# Application of Act

4. (1) This Act applies to the Republic, including—

(a) **its internal waters, territorial waters, exclusive economic zone and continental shelf**

(b) **the Prince Edward Islands**

(2) A provision of this Act which relates to **dumping and incineration at sea** applies to **South African aircraft and vessels** also when **outside the Republic**.



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# Application of National Environmental Management Act

- 5.(1) **This Act must be read, interpreted and applied in conjunction with the National Environmental Management Act.**
- (2) This Act must be regarded as a “**specific environmental management Act**” as defined in section 1 of the NEMA.
- (3) **Chapter 4 of NEMA applies to the resolution of conflicts** arising from the implementation of this Act.



# Conflicts with other legislation

6. (1) **Conflict relating to coastal management between this Act and any other legislation existing when this Act takes effect - this Act prevails.**
- (2) **A provision contained in this Act or NEMA, or in regulations made or authorisations issued under either Act, prevails if there is a conflict between it and savings made into this Act**
- (3) **Draft national legislation amending this Act, may be introduced in Parliament—**
- (a) by the Minister only; or**
  - (b) only after the Minister has been consulted on the contents of the draft legislation.**



# CHAPTER 2: THE COASTAL ZONE

- » Two zones are created:
  - **“Coastal public property”** – state land along the coast, the beach, estuaries and seas (s7 – 15)
  - **“Coastal protection zone”** – 100 m wide in urban and 1000m wide in rural areas (s16 – 17)
- » The “Coastal protection zone’s” inland boundary can be **adjusted** to: (s 26 – 29)
  - Make it **narrower in non-sensitive areas**
  - Make it **wider in sensitive areas**
- » The “coastal public property” and the “coastal protection zone” **do not affect:**
  - **Existing property rights**
  - **Provincial, municipal, cadastral, or other legally recognized boundaries**
  - **Powers of any organ of state to dispose of land**





## CHAPTER 2: CHANGES MADE SINCE GAZETTED

- » Preconditions for the extension of coastal public property made less restrictive (s8)
- » Movement of high water mark in relation to property boundaries clarified to address misconceptions of expropriation (s14)
- » “Buffer Zone” renamed to “protection zone” - buffer zone perceived negatively
- » Composition of the protection zone was redrafted to align it with land-use planning terminology (s16)



# CHAPTERS OVERVIEW & KEY CLAUSES

## Chapter 2: Coastal zones

Chapter 2 deals with the different zones of the coast.

It includes the following sections. Key clauses are highlighted and covered in specific slides below:

### ***Part 1***

#### ***Coastal public property***

7. Composition of coastal public property
8. Extending coastal public property
9. Acquisition of private land by State
10. Designation of State-owned land for certain purposes
11. Ownership of coastal public property
12. State public trustee of coastal public property
13. Access to coastal public property
14. Position of high-water mark
15. Measures affecting erosion and accretion

### ***Part 2***

#### ***Coastal protection zone***

16. Composition of coastal protection zone
17. Purpose of coastal protection zone



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# CHAPTERS OVERVIEW & KEY CLAUSES

## Chapter 2: Coastal zones (continued)

Chapter 2 deals with the different zones of the coast.

- » It includes the following sections. Key clauses are **highlighted** and covered in specific slides below:

### **Part 3**

#### **Coastal access land**

18. Designation of coastal access land

19. Process for designating and withdrawing designation of coastal access land

20. Responsibilities of municipalities with regard to coastal access land

### **Part 4**

#### **Coastal waters**

21. Control and management of coastal waters

### **Part 5**

#### **Coastal protected areas**

22. Excision of protected areas from coastal protection zone

### **Part 6**

#### **Special management areas**

23. Declaration of special management areas

24. Management of special management areas

### **Part 7**

#### **Coastal set-back lines**

25. Establishment of coastal set-back lines



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# Composition of coastal public property

» Coastal public property consists of—

**(a) coastal waters**

**(b) land submerged by the coastal waters**

**(c) any island**

**(d) the seashore**, but excluding any portion of the seashore lawfully alienated

**(e) the seashore of a privately owned island**

**(f) any admiralty reserve owned by the State;**

**(g) any State-owned land declared to be coastal public property;**

**(h) any natural resources** on or in—

(i) any coastal public property

(ii) the exclusive economic zone, or in or on the continental shelf

**(iii) any harbour, work or other installation that is owned by an organ of state.**



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# Extending coastal public property

8. (1) The Minister may declare any State-owned land as coastal public property in order—
- (a) to improve public access to the seashore;
  - (b) to protect sensitive coastal ecosystems;
  - (c) to secure the natural functioning of dynamic coastal processes;
  - (d) to facilitate the achievement of any of the objects of this Act; or
  - (e) to protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea level rise.
- (2) Before declaring State-owned land as coastal public property the Minister must—
- (a) **consult** with interested and affected parties; and
  - (b) **obtain the concurrence of the Minister, or of the MEC of the province, responsible for managing that State-owned land.**
- (3) Declared coastal public may **only be withdrawn** by the Minister **with the prior approval of Parliament.**



# Acquisition of private land by State

9. (1) The **Minister**, acting with the **concurrence of the Minister of Agriculture and Land Affairs**, may **acquire private land** for the purpose of declaring that land as coastal public property, by—
- (a) **purchasing** the land;
  - (b) **exchanging** the land for other land; or
  - (c) if no agreement is reached with the owner, by **expropriating** the land in accordance with the **Expropriation Act**
- (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)**.



# Designation of State-owned land for certain purposes

- 10.(1) The **Minister** may,—
  - (a) **designate** state owned land vested in the **national government**
  - (b) **withdraw** a designation
  
- (2) **Before** designating state owned land or withdrawing a designation the Minister must—
  - (a) **consult the MEC** of the province concerned;
  - (b) **consult the persons responsible for managing the state owned land and interested and affected parties** ; and
  - (c) obtain the **concurrence** of the **Minister** responsible for managing that **state owned land**.
  
- (3) The **MEC** may,—
  - (a) designate state owned land vested in the **provincial government**
  - (b) withdraw a designation

Note: Similar process as described in (2) above needs to be followed by MEC



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# Ownership of coastal public property

11. (1) 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.
- (2) Coastal public property is **inalienable and cannot be sold, attached, or acquired by prescription** and **rights** over it cannot be acquired by prescription.



# State public trustee of coastal public property

“12. 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**.



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# Access to coastal public property

13. (1) Any natural person in the Republic—
- (a) has a right of **reasonable access** to coastal public property; and
  - (b) is entitled to use and enjoy coastal public property, provided such use—
    - (i) does not adversely affect the rights of other members of the public
    - (ii) does not hinder the State in the performance of its duty; and
    - (i) does not cause an adverse effect.
- (2) This section **does not prevent restrictions on access** to coastal public property—
- (a) which 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**.
- (3) **No fee** may be charged **without the approval of the Minister**.
- (4) The Minister may require a public participation process
- (5) Subsections (3) and (4) do not apply to coastal public property—
- (a) that has been leased; or
  - (b) that is part of a protected area or a harbour.



# Position of high-water mark

14. (1) If land has a **curved boundary extending to or near the high-water mark** (HWM) that boundary may be **substituted by a different boundary** by following the procedure prescribed by the **Land Survey Act**, provided that in addition the agreement must be **signed by—**
  - (a) **the Minister**; and
  - (b) **the holder of real rights in the land** or in land next to it.
- (2) If a written agreement is not concluded procedures as described in that act must be followed.
- (3) The new boundary line shall be regarded as the HWM.
- (4) **If the HWM moves inland** of the boundary line and remains there for **at least two years, a new boundary line may be determined** by the Surveyor-General or may be requested by —
  - (a) the Minister;
  - (b) the municipality;
  - (c) the owner of land affected by the movement of the HWM; or
  - (d) the holder of real rights in land affected by the movement of the HWM.
- (5) **If the HWM moves inland** of the boundary line due to the **erosion** of the coast, **sea-level rise** or other causes, and remains there for a period of **three years**, the owner of that land unit—
  - (a) **loses ownership** of any portion of that land that is situated below the HWM; and
  - (b) normally **is not entitled to compensation**
- (6) If accretion occurs (the **beach gets wider**), the wider beach normally **remains coastal public property**, and does not become part of any adjoining property





# Position of high-water mark

» INSERT DIAGRAMME?



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# Measures affecting erosion and accretion

15.(1) The owner of land adjacent to the seashore **may not require** any organ of state or any other person to take measures to **prevent erosion or accretion** of the seashore, unless the erosion is caused by an intentional act.

(2) No person may construct any structure, or take other measures on coastal public property, to prevent or promote erosion or accretion of the seashore except as provided for in this Act.



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## Part 2

### Coastal protection zone

#### Composition of coastal protection zone

**16.(1)** The coastal protection zone **consists of—**

- (a) land falling within an area declared in terms of the Environment Conservation Act as a **sensitive coastal area**;
- (b) any part of the **littoral active zone** that is not coastal public property;
- (c) any coastal protection 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;
- (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.



# Purpose of coastal protection zone

17. The coastal protection zone is **established for** 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—
- (a) protect the **ecological integrity, natural character** and the **economic, social and aesthetic value**, of coastal public property;
  - (b) **avoid increasing the effect or severity of natural hazards** in the coastal zone;
  - (c) **protect people, property and economic activities** from **risks** arising from **dynamic coastal processes**, including the risk of **sea-level rise**;
  - (d) maintain the natural functioning of the littoral active zone;
  - (e) maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
  - (f) 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.





## Part 3

### Coastal access land

#### Designation of coastal access land

**18. (1) Each municipality must within four years designate strips of land as coastal access land in order to secure public access to coastal public property.**

(2) Coastal access land is subject to a public access servitude.

(3) A municipality must implement subsection (1) subject to certain conditions stipulated in the Act, e.g. public involvement and EIA

(4) No land within a **harbour, defence** or other **strategic facility** may be designated as coastal access land **without the consent of the Minister responsible for that facility.**

(5) A municipality may withdraw the designation of any inappropriate coastal access land.



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# Process for designating and withdrawing designation of coastal access land

- 19. (1) 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; and**
  - (c) give notice of the intended designation or withdrawal of to the owner of the land.**



# Responsibilities of municipalities with regard to coastal access land

20. (1) A municipality 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) **provide facilities** that promote access to coastal public property, including **parking areas, toilets, boardwalks and other amenities**, taking into account the needs of **physically disabled** persons;
  - (f) ensure that it **does not cause adverse effects** to the environment;
  - (g) **remove** any public access servitude that is **causing adverse effects**;
  - (h) **indicate all coastal access land** in any municipal coastal management programme and in any municipal spatial development framework;
  - (i) perform any other actions that may be prescribed; and
  - (j) **report to the MEC within two years** on progress.
- (2) A municipality may make by-laws to ensure proper implementation.



## **Part 4**

### **Coastal waters**

## **Control and management of coastal waters**

- 21.** An organ of state that is legally responsible for controlling or managing any activity on or in coastal waters, must control and manage that activity—
- (a) in the interests of the whole community; and**
  - (b) in accordance with the Republic's obligations under international law.**



## ***Part 5***

### ***Coastal protected areas***

## **Excision of protected areas from coastal protection zone**

- 22.** (1) The MEC may declare that the **whole** or any **part** of a protected area, that is not coastal public property, **will not** form part of the coastal protection zone.
- (2) The MEC may only publish a notice **after** consultation with the management authority of the protected area.



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## Part 6

### Special management areas

#### Declaration of special management areas

- 23.(1) The MEC may, after consultation with the Minister, —
- (a) declare an coastal area to be a special management area; or
  - (b) withdraw or amend any declaration made.
- (2) Before declaring an area the MEC must give **interested and affected parties** an opportunity to make representations.
- (3) An area may be declared as a special management area only if **environmental, cultural or socio-economic** conditions in that area require the introduction of measures which are necessary in order to more effectively—
- (a) **attain the objectives of any coastal management programme** in the area;
  - (b) **facilitate the management of coastal resources by a local community**;
  - (c) **promote sustainable livelihoods** for a local community; or
  - (d) **conserve, protect or enhance coastal ecosystems and biodiversity** in the area.



# Part 6

## Special management areas

### Declaration of special management areas

#### Management of special management areas

24.(1) The MEC must appoint a manager for a special management area.

(2) The manager must have sufficient expertise and capacity and may be—

- (a) a **juristic person** constituted for that purpose;
- (b) an **organ of state**;
- (c) a **traditional council**; or
- (d) **any other person** with appropriate expertise and capacity.

(3) The MEC must make **regulations** that—

- (a) define the **duties and powers** of the manager; and
- (b) prescribe **rules to facilitate the achievement of the objectives** for which the special management area was declared.



# Part 7

## Coastal set-back lines

### Establishment of coastal set-back lines

25. (1) An MEC may—
- (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;
    - (iii) to **preserve the aesthetic values** of the coastal zone; or
    - (iv) for **any other reason consistent with the objectives of this Act**; and
  - (b) **prohibit or restrict the building**, erection, alteration or extension of structures that are wholly or partially seaward of that coastal set-back line.
- (2) Before making or amending the regulations the MEC must—
- (a) consult with the appropriate local municipality; and
  - (b) give interested and affected parties an opportunity to make representations.
- (3) A local municipality must delineate the coastal set-back line on maps that form part of its zoning scheme.
- (4) A coastal set-back line may be situated wholly or partially outside the coastal zone.



# Determination and adjustment of coastal boundaries

26. (1) The coastal boundaries of—
- (a) **coastal public property** may be determined or adjusted by the **Minister**;
  - (b) the **coastal protection zone** - the **MEC**;
  - (c) a **special management area** - the **MEC**; and
  - (d) **coastal access land** - the **municipality**.
- (2) The Minister may make any consequential change to adjoining coastal boundaries.
- (3) The coastal boundaries **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) it is believed that the **objects of this Act will be achieved more effectively**.
- (4) The relevant authority must—
- (a) give interested and affected parties an opportunity to make representations;
  - (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 prescribed.
- (5) If the Minister or MEC determines or adjusts any coastal boundary, he or she must inform the relevant municipality.



# Determining and adjusting coastal boundary of coastal public property

27. When determining the inland boundary of coastal public property, the Minister must take into account—

- (a) the dynamic nature of the shoreline;
- (b) the need to make allowance for –
  - (i) movements in the high-water mark; and
  - (ii) the changes (erosion and accretion) of the seashore;
- (c) the natural functioning of coastal processes and including the dynamic zone, sensitive coastal ecosystems & wetlands;
- (d) sea-level rise; and
- (e) any other factor that may be prescribed.





# Determining and adjusting coastal boundaries of coastal protection zone

- 28.(1) When the MEC determines the boundaries of the coastal protection zone (CPZ) no changes may be made to the boundaries of coastal public property (CPP).
- (2) The MEC may include land that is not adjacent to CPP in the CPZ.
- (3) The MEC must take into account—
- (a) the purpose of the CPZ;
  - (b) the importance of incorporating land inland of the high-water mark that should be maintained in, or restored to, a natural or semi-natural state;
  - (c) the need to avoid risks posed by natural hazards to people, biodiversity, coastal public property, and private property;
  - (d) the potential for natural disasters due to the effects of global climate change;
  - (e) the movement of the position of the high water mark; and
  - (g) any other factor that may be prescribed.



# Determining and adjusting coastal boundaries of coastal access land

29. When determining a boundary of coastal access land a municipality must take into account—
- (a) the kind of public access required, and whether it is for—
    - (i) pedestrians;
    - (ii) vehicles;
    - (iii) vessels; or
    - (iv) any other kind of access;
  - (b) any potential adverse effects that may be cause, including by—
    - (i) associated infrastructure;
    - (ii) vehicles, vessels or other conveyances; and
    - (iii) increased numbers of people;
  - (c) the need for parking, recreational and ablution facilities;
  - (d) any existing rights of way, public servitudes or customary means of gaining access to the seashore and coastal waters;
  - (e) the need to protect any coastal protected areas; and
  - (f) the importance of not restricting the rights of land owners unreasonably.



# Entry onto land

30. (1) The **Minister**, an **MEC** or a **municipality** may for the purpose of determining a coastal boundary, authorise any person to **enter at any reasonable time, after reasonable notice to the owner** or occupier of land or premises, **other than residential premises**, without a warrant, to –
- (a) conduct any survey;
  - (b) gather data;
  - (c) undertake an environmental assessment;
  - (d) erect a beacon; or
  - (e) take any other steps that may be necessary under this section.
- (2) A person must **produce proof of his or her identity** and authority to enter such land or premises.
- (3) Where the **owner** of any land or premises has **refused entrance or cannot be found**, the Minister, MEC or a municipality **may apply to the High Court** for an appropriate order.
- (4) The Minister, MEC or a municipality must **compensate the owner for any damage**, or repair any damage.



# Marking coastal boundaries on zoning maps

**31. When boundaries are determined** a local municipality within whose area of jurisdiction the coastal boundary is situated **must delineate that coastal boundary on a map** that form part of its zoning scheme.

## Endorsements by Registrar of Deeds

**32. (1)** The **Registrar of Deeds must be informed** whenever a coastal boundary has been determined.

**(2)** The notification must—

**(a)** include a **description of the land** involved; **or**

**(b)** be accompanied by a **diagram** which is signed by a land surveyor.

**(3)** The Registrar of Deeds must **make a note in the relevant register** of the determination of a coastal boundary.



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# CHAPTER 4

## ESTUARIES

### National estuarine management protocol

33. (1) Estuaries must be managed in accordance with a national **estuarine management protocol**.
- (2) The **Minister**, with the concurrence of the **Minister responsible for water affairs**, must within four years prescribe a 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** how estuaries must be managed;
  - (d) establish **minimum requirements** for estuarine management plans;
  - (e) **identify who must prepare** estuarine management plans and the **process** to be followed;
  - (f) specify the **process for reviewing** estuarine management plans; and
  - (g) be **published for public comment**.





# Estuarine management plan

**34.** (1) The person who develops an estuarine management plan must –

(a) **follow a public participation process;** and

(b) **ensure** that the estuarine management plan are **consistent with** –

(i) the **national estuarine management protocol;** and

(ii) the **national & provincial & local** coastal management programmes.

(2) An estuarine management plan **may form part of a provincial or a municipal** coastal management programme.



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# CHAPTER 5

## INSTITUTIONAL ARRANGEMENTS

### *Part 1*

#### *National Coastal Committee*

#### **Establishment and functions of National Coastal Committee**

- 35.(1) The Minister may establish a **National Coastal Committee (NCC)** and determine its powers.
- (2) The **Department** must provide **administrative support** to the NCC.
- (3) The NCC must **promote integrated coastal management 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 –



# Continued:

(3) The NCC must in particular –

(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;

(b) **promote the integration of coastal management concerns and objectives into –**

(i) **environmental implementation plans and environmental management plans** referred to in NEMA;

(ii) national, provincial and municipal development **policies, plans and strategies;**

(iii) other plans, programmes and policies of organs of state whose activities may create adverse effects on the coastal environment; and

(c) perform any function delegated to it.



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# Composition of National Coastal Committee

36. (1) The Minister appoints the members of the National Coastal Committee (NCC).
- 2) (a) Persons appointed must, **by virtue of the office that they hold or their expertise**, be able to assist the NCC in fulfilling its functions.
- (b) The National Coastal Committee **must include** –
- (i) **persons with expertise in coastal management and coastal ecosystems;**
  - (ii) **a representative from each Provincial Coastal Committee;**
  - (iii) **members representing municipalities;**
  - (iv) **representatives of key national government departments; and**
  - (v) **management authorities of coastal protected areas.**
- (3) The Minister may, appoint—
- (a) **an alternate member;** and
  - (b) **a replacement for any member who vacates his or her office.**
- (4) The **Minister** must, **with the consent of the Minister of Finance**, determine the **rate of remuneration** and the allowances payable to any member of the National Coastal Committee who is **not an employee of an organ of state**.



# Vacation of office and termination of membership

- 37.(1) A member of the National Coastal Committee **vacates office** if he or she—
- (a) **becomes impaired** and is unable to carry out his or her duties as a member of the NCC;
  - (b) **ceases to hold any qualification necessary** for his or her appointment; or
  - (c) tenders his or her **resignation**.
- (2) The Minister may terminate membership of the member of the NCC where—
- (a) he or she **fails to perform the duties** of a member as required;
  - (b) he or she **obstructs or impedes the NCC** in the performance of its functions;
  - (c) he or she **brings the NCC into disrepute**; or
  - (d) such termination is **in the interest of the public**.





## **Part 2**

### **Provincial lead agencies**

#### **Designation and functions of provincial lead agency**

38. (1) The **Premier** of each coastal province must, within **two** months, designate a **provincial lead agency (PLA) for coastal management** which is **responsible to the MEC**.
- (2) Each provincial lead agency must:
- (a) **Co-ordinate the implementation of the provincial coastal management programme;**
  - (b) **Monitor coastal management** to ensure that it is undertaken in an **integrated, effective and efficient manner** and in accordance with the objects of this Act;
  - (c) **Monitor the state of the coast**, and identify provincial priority issues;
  - (d) Prepare a **provincial state of the coast report**;
  - (e) Provide logistical and **administrative support to the PCC**;
  - (f) **Review reports relating to determinations of boundaries or policies that may impact on the coastal zone;**
  - (g) **Promote training, education and public awareness** programmes;
  - (h) **Monitor compliance with, and enforce this Act**, either alone or in co-operation with other enforcement agencies; and
  - (i) Perform any other **functions assigned** to it.
- (3) The Premier may assign some of the functions to another organ of state.



## **Part 3**

### **Provincial Coastal Committees**

#### **Establishment and functions of Provincial Coastal Committees**

- 39.(1) Each **MEC** must within **12 months** establish a **Provincial Coastal Committee (PCC)**.
- (2) A PCC must –
- (a) **Promote effective implementation of this Act and the provincial coastal management programme;**
  - (b) **Advise the MEC, the PLA and the NCC on coastal management issues;**
  - (c) **Advise the MEC on developing, finalising, reviewing and amending the provincial coastal management programme;**
  - (d) **Providing a forum for dialogue, co-operation and co-ordination between the key organs of state and other coastal stakeholders;**
  - (e) **Promote the integration of coastal management concerns and objectives into plans, programmes and policies; and**
  - (f) **Perform any function delegated to it.**





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# Composition of Provincial Coastal Committees

- » **40.** (1) Subject to subsection (5), the MEC must determine the composition of the Provincial Coastal Committee, and in doing so must take account of the desirability of ensuring the representation on the Provincial Coastal Committee of organs of state and community groups or bodies which have a material and direct interest in the conservation and management of the coast or the use of coastal resources.
- » (2) The MEC must—
- » (a) appoint persons to the Provincial Coastal Committee who by virtue of the office that they hold or their expertise are able to assist the Provincial Coastal Committee in fulfilling its functions; and
- » (b) when appointing persons in terms of paragraph (a), ensure that the Provincial Coastal Committee includes—
- » (i) persons with expertise in fields relevant to coastal management; and
- » (ii) one or more members representing municipalities in the coastal zone.
- » (3) The MEC may, on the basis of the criteria referred to in subsections (1) and (2), appoint—
- » (a) an alternate member for any member of the Provincial Coastal Committee; and
- » (b) a replacement for any member who vacates his or her office.
- » (4) The MEC must, with the consent of the MEC responsible for finance in the province, determine the rate of remuneration and the allowances payable to any member of the Provincial Coastal Committee who is not an employee of an organ of state.
- » (5) The Director-General may appoint a member of the Department to participate as a non-voting member of a Provincial Coastal Committee and may appoint an alternate or replacement for any such member.



# Composition of Provincial Coastal Committees

40. (1) The **MEC** must determine the composition of the PCC, and in doing so must take account of the desirability of **ensuring the representation on the PCC of organs of state and community groups** or bodies which have a material and direct interest in the conservation and management of the coast or the use of coastal resources.
- (2) The MEC **must**—
- (a) appoint persons who by virtue of **their office** or **their expertise** are able to assist the PCC; and
  - (b) ensure that the PCC includes—
    - (i) members with **expertise in coastal management**; and
    - (ii) **members representing municipalities**.
- (3) The MEC may appoint—
- (a) **alternate** members; and
  - (b) a **replacement** for any member who vacates his or her office.
- (4) The **MEC must**, with the consent of the **MEC responsible for finance**, determine the **rate of remuneration** and the allowances payable to any member of the PCC who is not an employee of an organ of state.
- (5) The **Director-General** may appoint a member of the Department to participate as a **non-voting member** of a PCC.





# Vacation of office and termination of membership

41. (1) & (2)

*A member of a Provincial Coastal Committee vacates office for similar reasons as detailed for the NCC in section 37 above.*



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## Part 4

### ***Municipal Coastal Committees***

#### **Establishment and functions of municipal coastal committees**

42. (1) Each **metropolitan municipality** and each **district municipality** that has jurisdiction over any part of the coastal zone **may** establish a coastal committee and determine its powers.
- (2) Any **local municipality** may establish a coastal committee for the municipality and determine its powers, which may include the power to establish local sub-committees.
- (3) A municipal coastal committee **may include**—
- (a) persons with **expertise in coastal management**; and
  - (b) representatives of **management authorities of coastal protected areas or special management areas**; and
  - (c) representatives of **communities or organisations** with a particular interest in coastal management,.
- (4) A municipal coastal committee contemplated in subsections (1) and (2) may—
- (a) promote **effective implementation of this Act** and the **municipal coastal management programme**;
  - (b) **advise the municipal manager, the municipal council and the PCC**;
  - (c) **advise the municipality** on developing, finalising, reviewing and amending the **municipal coastal management programme**;
  - (d) 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;
  - (e) promote the **integration of coastal management concerns and objectives** into the municipality's **integrated development plan (IDP)** and **spatial development framework (SDF)** and into other municipal **plans, programmes and policies**; and
  - (f) perform any coastal governance function delegated to it.



## ***Part 5***

# **Voluntary coastal officers**

- 43.(1) The MEC may appoint any member of the public as a voluntary coastal officer.
- (2) A voluntary coastal officer must exercise the powers and perform the duties assigned to him or her by the MEC.
- (3) The MEC must—
- (a) prescribe the powers and duties of voluntary coastal officers;
  - (b) define the responsibilities and duties of each voluntary coastal officer; and
  - (c) issue each voluntary coastal officer with an identity card.
- (4) A voluntary coastal officer must produce his or her identity card at the request of a member of the public.



## CHAPTER 6 COASTAL MANAGEMENT

### *Part 1*

#### *National coastal management programme*

#### Preparation and adoption of national coastal management programme

44. (1) The Minister must—
- (a) within **four years**, prepare and adopt a **national coastal management programme**;
  - (b) **review** the programme at least once every **five years**; and
  - (c) may amend the programme.
- (2) **Before adopting** a programme the Minister must **invite members of the public to submit to the Minister written representations**.
- (3) The Minister must, **within 60 days of the adoption** of the national coastal management programme **or of any substantial amendment** to it –
- (a) **give notice** —
    - (i) of the adoption of the programme; and
    - (ii) indicate where copies, or extracts from the programme are available for public inspection; and
  - (b) **publicise a summary** of the programme.



# Contents of national coastal management programme

45. (1) The **national coastal management programme (NCMP)** must—
- (a) be a **policy directive** on integrated coastal management; and
  - (b) provide for **an integrated, co-ordinated and uniform approach** to coastal management.
- (2) The NCMP must include:
- (a) A national **vision**;
  - (b) National **coastal management objectives**;
  - (c) **Priorities and strategies** to achieve those objectives;
  - (d) **Performance indicators**;
  - (e) **Norms and standards** for the management of—
    - (i) the coastal zone generally;
    - (ii) the specific components of the coastal zone; and
  - (f) A **framework for co-operative governance** that—
    - (i) identifies the responsibilities of different organs of state; and
    - (ii) facilitates co-ordinated and integrated coastal management.





## **Part 2**

### ***Provincial coastal management programmes***

#### **Preparation and adoption of provincial coastal management programme**

#### **46. (1) – (4)**

*“The MEC of each coastal province must within four years prepare a PCMP following a similar process as described above in section 45 for the NCMP, but with a provincial focus.”*



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## **Part 2**

### **Provincial coastal management programmes**

#### **Preparation and adoption of provincial coastal management programme**

##### **Contents of provincial coastal management programmes**

**47. (1) A PCMP must—**

- (a) be a policy directive** for the management of the coastal zone;
- (b) provide for an integrated, coordinated and uniform approach;** and
- (c) be consistent with—**
  - (i) the NCMP;** and
  - (ii) the national estuarine management protocol.**

**(2) A PCMP must include—**

- (a) a vision;**
- (b) the coastal management objectives** for the province;
- (c) priorities and strategies—**
  - (i) to achieve the coastal management objectives of the province;**
  - (ii) to assist in the achievement of the national coastal management objectives;**
  - (iii) to develop estuarine management plans; and**
- (d) performance indicators.**

**(3) A PCMP may include a programme of projected expenditure and investment** in order to implement the PCMP.



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## ***Municipal coastal management programmes***

### **Preparation and adoption of municipal coastal management programme**

**48. (1) – (4)**

*“A coastal municipality must within four years prepare a MCMP following a similar process as described above in section 45 for the NCMP, but with a local focus.”*



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# ***Municipal coastal management programmes***

## **Contents of municipal coastal management programme**

**49. (1) – (3)**

*“A coastal municipality must have similar contents as described above in section 47 for a PCMP, but with a local focus..“*



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# Contents of municipal coastal management programmes

- » **49.** (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; and
    - » (ii) the national estuarine management protocol.
- » (2) A municipal coastal management programme must include—
  - » (a) a vision for the management of the coastal zone within the jurisdiction of the municipality, including the sustainable use of coastal resources;
  - » (b) the coastal management objectives for the coastal zone within the jurisdiction of the municipality;
  - » (c) priorities and strategies—
    - » (i) to achieve the coastal management objectives of the municipality; and
    - » (ii) to assist in the achievement of the national and provincial coastal management objectives as may be applicable in the municipality; and
  - » (d) performance indicators to measure progress with the achievement of those objectives.
- » (3) A municipal coastal management programme may include—
  - » (a) a programme of projected expenditure and investment by the municipality in coastal management infrastructure or in order to implement any coastal management programme;
  - » (b) a description of specific areas within the coastal zone that require special coastal management, and management strategies for those areas;
  - » (c) estuarine management plans; and
  - » (d) any other matter that may be prescribed.



# Municipal By-laws

**50.** 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.



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## **Part 4**

### ***Co-ordination and alignment of plans and coastal management programmes***

#### **Alignment of certain plans with coastal management programmes**

- 51.** An environmental implementation or environmental management plan in terms of Chapter 3 of the NEMA, an integrated development plan in terms of the Municipal Systems Act, and a provincial or municipal land development plan must—
- (a) be aligned with the national coastal management programme and any applicable provincial coastal management programme;
  - (b) contain those provisions of the national coastal management programme and any applicable provincial coastal management programme that specifically applies to it; and
  - (c) give effect to the national coastal management programme and any applicable provincial coastal management programme.



# Ensuring consistency between coastal management programmes and other statutory plans

52. (1) A “statutory plan” means a plan, policy or programme adopted by an organ of state that may affect coastal management, and may include—
- (a) an environmental implementation or environmental management plan prepared in terms of NEMA;
  - (b) an IDP adopted by a municipality;
  - (c) the national biodiversity framework or bioregional plan into the Biodiversity Act;
  - (d) a provincial or municipal land development plan;
  - (e) a provincial strategic policy and plan promoting sustainable development; and
  - (f) the national estuarine management protocol.
- (2) The Minister must ensure consistency between the national coastal management plan and other statutory plans.
- (3) The MEC must ensure that consistency between the provincial coastal management plan and other statutory plans.
- (4) Each municipality must ensure that its IDP & SDF are consistent with statutory plans.
- (5) If there is a conflict between a coastal management programme and a statutory plan, this must be resolved through discussion, failing which it must be dealt with in Chapter 4 of the NEMA.
- (6) Conflicts must be resolved in a manner that best promotes the objects of this Act.
- (7) Once resolved, appropriate amendments must be made to the plan(s).



## **Part 5**

### **Public participation**

#### **Consultation and public participation**

- 53.(1) **Before** exercising a power in accordance with this section, the **Minister, MEC, municipality or other person** must –
- (a) **consult** with all **Ministers, MEC's or municipalities** whose areas of responsibilities will be affected;
  - (b) **bring it to the attention of the public**; and
  - (c) by notice in the *Gazette*—
    - (i) **invite comments** for **minimum 30** days; and
    - (ii) ensure notice contains **sufficient information**.



## **Part 6**

### **Review of coastal management programmes**

#### **Minister's powers to review coastal management programmes**

54. (1) The Minister may review a provincial coastal management programme (PCMP).
- (2) The Minister must determine whether or not it—
- (a) meets the requirements specified in section 47;
  - (b) is consistent with the national coastal management programme (NCMP);
  - (c) gives adequate protection to coastal public property; and
  - (d) provides an appropriate policy framework for establishing an effective and efficient system of coastal management.
- (3) If it does not meet all the criteria above the MEC must amend or replace the PCMP.
- (4) A MEC must amend or replace the PCMP by following the same procedure used to prepare and adopt, except that the new or amended PCMP may not be adopted without the consent of the Minister.
- (5) (a) The Minister may request an MEC to review a municipal CMP.  
(b) If the MEC is unable or unwilling to review the MCMP the Minister may do so.



# Review of municipal coastal management programmes

55.(1) – (4)

*“An MEC can review a municipal coastal management programme following the same process as described in section 54 above for the Minister’s review of a PCMP”.*



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## **Part 7**

### **Coastal zoning schemes**

#### **Zoning schemes for areas within coastal zone**

56.(1) A coastal zoning scheme facilitates the attainment of coastal management objectives by—

- (a) **defining areas** which may—
  - (i) **be used exclusively** for specified purposes; or
  - (ii) **not be used** for specified purposes; and

(b) **prohibiting or restricting activities.**

(2) 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; and
  - (iv) any estuarine management plan applicable in the area; and

(c) take into account any other applicable coastal management programmes.



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## Part 7

### Coastal zoning schemes

#### Zoning schemes for areas within coastal zone

56. (3) A coastal zoning scheme may be established by—
- (a) the **Minister, after consultation** with the **MEC** and any **authority responsible for managing an area** to which the zoning scheme applies, if it applies to—
    - (i) an area of coastal public property (CPP) and is established to protect and control the **use of marine living resources** or to implement **national norms or standards**; or
    - (ii) an area of the coastal zone that **straddles the border between two provinces**, or adjoins or **straddles the borders of the Republic of South Africa**;
  - (b) the **authority managing a coastal protected area**, if the zoning scheme applies within that protected area;
  - (c) the **MEC**, after consulting the Minister and authority managing that area, **and applies to an area of the coastal zone within the province**;
  - (d) **the municipality**, after consulting the MEC and any authority managing that area **and applies to an area falling within its jurisdiction**; and
  - (e) **the management authority of a special management area**, after consulting the MEC and the municipality, if it **applies within that management area**.



## **Part 7**

### **Coastal zoning schemes**

#### **Zoning schemes for areas within coastal zone**

56. (4) A coastal zoning scheme established by—
- (a) the **Minister takes precedence** over any other coastal zoning scheme;
  - (b) the **authority managing a coastal protected area**, takes precedence **except over** one established by the Minister;
  - (c) an **MEC takes precedence over any others**; or
  - (d) a **municipality** takes precedence over any other coastal zoning scheme except if established by the Minister, MEC the management authority for a protected area.
- (5) A coastal zoning scheme may only be established **with the consent of—**
- (a) **the Minister**, if it extends **further than 500 metres into the sea** or **affects** the protection or use of **marine living resources**; or
  - (b) **the Minister of Transport**, if the scheme—
    - (i) affects the **navigation of vessels** on the sea; or
    - (ii) **restricts vessels entering or leaving a harbour**.
- (6) A coastal zoning scheme may not create any rights to use land or coastal waters.



# Coastal zoning and land use schemes of municipalities

- 57.(1) Subject to section 56(5), a coastal zoning scheme of a municipality may form, and be enforced as part of, any land use scheme adopted by the municipality.
- (2) (a) A municipality may not adopt a land use scheme that is inconsistent with a coastal zoning scheme made in terms of this Act.
- (b) If there is a conflict, the coastal zoning scheme shall prevail.



# CHAPTER 7

## PROTECTION OF COASTAL ENVIRONMENT

### *Part 1*

#### *Assessing, avoiding and minimising adverse effects*

#### **Duty to avoid causing adverse effects on coastal environment**

58. (1) (a) **Section 28 of NEMA applies to any impact that adversely effects the coast.**
- (b) A reference in that section to—
- (i) “significant pollution or degradation of the environment”, also includes an adverse effect on the coastal environment;
  - (ii) “environment” includes the coastal environment; and
  - (iii) “environmental management plan” includes a coastal management programme.
- (2) For the purposes of subsection (1) –
- (a) the **Minister may determine** that an impact or activity must be presumed to result in an adverse effect; and
  - (b) the persons to whom section 28(1) and (2) of NEMA applies includes—
    - (i) a **user of coastal public property**;
    - (ii) the **owner, occupier, person in control of, or user of land or premises** on which an activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
    - (iii) the **owner or person in charge of a vessel, aircraft or platform or structure at sea**, or the **owner or driver of a vehicle**, in respect of which any activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
    - (iv) the **operator of a pipeline** that ends in the coastal zone; or
    - (v) any person who **produced a substance** which caused, is causing or is likely to cause an adverse effect.



# Continuation: Chapter 7

- » **58.** (1) (a) Section 28 of the National Environmental Management Act applies, subject to the necessary changes, to any impact caused by any person that has an adverse effect on the coastal environment.
- » (b) For the purposes of the application of section 28 a reference in that section to—
  - » (i) “significant pollution or degradation of the environment”, must be read as including an adverse effect on the coastal environment;
  - » (ii) “environment” must be read as including the coastal environment; and
  - » (iii) “environmental management plan” must be read as including a coastal management programme applicable in the area concerned.
- » (2) For the purposes of subsection (1) –
  - » (a) the Minister may, by notice in the *Gazette*, determine that an impact or activity described in the notice must be presumed, until the contrary is proved, to result in an adverse effect; and
  - » (b) the persons to whom section 28(1) and (2) of the National Environmental Management Act applies must be regarded as including—
    - » (i) a user of coastal public property;
    - » (ii) the owner, occupier, person in control of, or user of land or premises on which an activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
    - » (iii) the owner or person in charge of a vessel, aircraft or platform or structure at sea, or the owner or driver of a vehicle, in respect of which any activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
    - » (iv) the operator of a pipeline that ends in the coastal zone; or
    - » (v) any person who produced a substance which caused, is causing or is likely to cause an adverse effect.



# Coastal protection notice and coastal access notice

59. (1) If the **Minister** believes 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 coastal environment then he or she **may issue a written coastal protection notice** to that person –
- (a) **prohibiting the activity** if it is not already prohibited in terms of this Act; and
  - (b) **instructing that person—**
    - (i) **to take appropriate steps to protect the environment;**
    - (ii) **to investigate and evaluate the impact** of an activity on the coastal environment in accordance with Chapter 5 of the NEMA; or
    - (iii) **to stop or postpone the activity** for a reasonable period to allow for the investigation to be carried out and for the Minister or MEC to evaluate it.
- (2) **Before** issuing a coastal protection notice, the Minister must—
- (a) **consult with any other organ of state that authorised or is competent to authorise**, the undertaking of the activity or proposed activity concerned; and
  - (b) give the **person an opportunity of making representations.**





59. (3) The power of the **Minister** to issue a coastal protection notice may only be **delegated to**—
- (a) the **MEC**, who may **subdelegate this power to a municipality** in that province; or
  - (b) an **official in the Department**.
- (4) A coastal protection notice
- (a) **must state** —
    - (i) the reasons for the notice;
    - (ii) the period within which it must be carried out; and
    - (ii) that the person may appeal;
  - (b) **may instruct the person to**, among other matters—
    - (i) to build, maintain or demolish any specified works;
    - (ii) to close a public access or prevent unauthorised access to coastal public property;
    - (iii) to plant, cultivate, preserve or stop damaging indigenous vegetation;
    - (iv) to stop altering the geographical features of land;
    - (v) to build or maintain any specified works to protect land from wind erosion;
    - (vi) to rehabilitate land;
    - (vii) to remove stock from land; or
    - (viii) to take measures to protect indigenous fauna.
- (5) If the Minister believes 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 persons to gain access to, use and enjoy coastal public property (CPP)**, then the Minister may issue a **coastal access notice**—
- (a) prohibiting the activity; and
  - (b) instructing that person to take appropriate steps to allow persons access to the CPP;
- (6) When issuing a notice contemplated in subsection (5), the provisions of subsections (2), (3) and (4) apply with the necessary changes.



# Repair or removal of structures within coastal zone

60. (1) The **Minister or MEC**, may issue a written repair or removal notice 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 this Act or any other law.
- (2) **Before issuing a repair and removal notice**, the Minister or MEC must—
- (a) **consult with any other organ of state** that authorised or is competent to authorise the undertaking of the activity or proposed activity concerned; and
  - (b) **give the person an opportunity of making representations.**
- (3) **The power of the Minister** to issue a repair and removal notice may only be **delegated to**—
- (a) the **MEC** who may **subdelegate this power to a municipality** in that province; or
  - (b) **an official in that department.**
- (4) A repair and removal notice—
- (a) **must state**—
    - (i) the reasons for the notice; and
    - (ii) that the person may appeal ; and
  - (b) **may instruct** the person responsible for the structure—
    - (i) to remove the structure within a specified period;
    - (ii) to rehabilitate the site;
    - (iii) to repair the structure to; or
    - (iv) to take any other steps to secure the removal or repair of the structure.
- (5) **If a person cannot be found** the Minister or the MEC may—
- (a) **publish a notice once in the Gazette** and once a week for **two consecutive weeks** in a **newspaper** circulating in the area; and
  - (b) **affix a copy of the notice to the structure** in question during the period of advertisement.



# Failure to comply with certain notices

61. If a person fails to comply with a **coastal protection notice**, **coastal access notice** or **repair and removal notice**, or if the person responsible is not identified after publication of a notice in the Gazette and the local newspaper, the Minister or the MEC who issued the notice **may instruct** appropriate persons to—

(a) **carry out what is required by the notice**, and

(b) **recover the costs** reasonably incurred in carrying out the required action.



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## **Part 2**

### **Regulation of coastal zone**

#### **Implementation of land use legislation in coastal protection zone**

- 62.(1)** An organ of state that is responsible for implementing national, provincial or municipal legislation that regulates the planning or development of land **must apply that legislation** in relation to land in the coastal protection zone **in a way that gives effect to the purposes for which the protection zone is established** (S 17).
- (2)** An organ of state **may not authorise land within the coastal protection 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.**



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# Part 3

## Integrated environmental authorisations

### Integrated environmental authorisations for coastal activities

63. (1) Where an integrated environmental authorisation (IEA) in terms of NEMA 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 effect** of its impact together with those of existing activities;
  - (g) the likely **impact of coastal environmental processes on the proposed activity**; and
  - (h) the **objects of this Act**.
- (2) The competent authority **may not issue an IEA** if it —
- (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 inconsistent with the purpose for which a coastal protection zone is established (S 17);
  - (c) is inconsistent with the purpose for which coastal access land is designated (S18);



- 63 (2) (d) is likely to **cause adverse effects** to the coastal environment **that cannot satisfactorily be mitigated**;
- (e) **is likely to be damaged by dynamic coastal processes**;
  - (f) would prejudice the **achievement of any coastal management objective**; or
  - (g) would be **contrary to the interests of the whole community**.
- (3) **Notwithstanding subsection (2)**, the competent authority **may issue an integrated environmental authorisation (IEA)** in respect of an activity or a development that does not meet the criteria referred to 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 IEA **cannot be approved** because of a provision of subsection (2), but it is believed that issuing the authorisation **would be in the public interest**, it **may be referred to the Minister**.
- (5) The competent authority must ensure that the **terms and conditions of any IEA** are **consistent with any applicable coastal management programmes** and **promote the attainment of coastal management objectives**.





## Minister may grant integrated environmental authorisation in interests of whole community

64.(1) If an application for an **IEA is referred to the Minister** the Minister may, after consultation with the MEC of the relevant province, **issue or authorise the other relevant competent authority to issue** the integrated environmental authorisation—

(a) if the activity for which the IEA 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 possible.

(2) The Minister may require the applicant to furnish additional information.



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## **Part 4**

# **Coastal leases and coastal concessions on coastal public property**

## **Award of leases and concessions on coastal public property**

65. (1) **Subject to sections 67 and 96, 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 96, **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; 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 **does not relieve** the lessee or concessionaire from the obligation to—
- (a) **obtain any other authorisation that may be required; or**
  - (b) **comply with any other legislation.**



## Terms of coastal leases and coastal concessions

- 66.(1)** A coastal lease or coastal concession –
- (a)** must be awarded for **not more than 20 years**;
  - (b)** is subject to **prescribed conditions**; and
  - (c)** must provide for the **payment of a reasonable rent**.
- (2)** A coastal 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.



## **Part 5**

### **General provisions**

#### **Temporary occupation of land within coastal zone**

67. (1) **Subject to the Expropriation Act**, 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) The **powers of the Minister** may be **delegated** to—
- (a) the **MEC**, who may **subdelegate this power to a municipality**; or
  - (b) **an official in that Department**.
- (3) If the land is **private property**, the Minister or the MEC, must, before occupying the land, **give the occupier and the owner of the land reasonable notice** of the intention to occupy and the purpose of the occupation.



# Amendment, revocation, suspension or cancellation of authorisations

68. (1) An issuing authority may **amend, revoke, suspend or cancel an authorisation**, if—
- (a) a condition is not adhered to;
  - (b) it is in conflict with a coastal management programme or a coastal management objective;
  - (c) changes in circumstances require it; or
  - (d) it is necessary to meet the Republic's international obligations.
- (2) An issuing authority must by written notice request the holder to make written representations why the authorisation should not be amended, revoked, suspended or cancelled.
- (3) After consider all circumstances, including representations by the holder it may—
- (a) revoke the authorisation;
  - (b) suspend the authorisation;
  - (c) cancel the authorisation;
  - (d) alter the terms or conditions of the authorisation; or
  - (e) decide not to amend, revoke, suspend or cancel the authorisation.
- (4) Notwithstanding the above, the issuing authority may, whenever it is in the interests of the promotion, protection or utilisation on a sustainable basis of the coastal zone, by written notice to the holder of a authorisation amend, revoke, suspend or cancel the authorisation.
- (5) If the issuing authority intends to exercise the powers under subsection (4), then the provisions of subsection (2) apply.
- (6) **If the Minister or an issuing authority temporarily suspend an authorisation.**
- (7) The above **also applies to Integrated Environmental Authorizations (IEA's).**



# CHAPTER 8 - MARINE AND COASTAL POLLUTION CONTROL

## Discharge of effluent into coastal waters

69. (1) No person may discharge effluent into coastal waters except in terms of a **general authorisation (S (2))** or a **coastal waters discharge permit (CWDP)** issued by the Minister (after consultation with the Minister responsible for water affairs if discharged into an **estuary**).
- (2) The Minister may by notice **authorise persons in general, or a category of persons**, to discharge effluent into coastal waters.
- (3) Applicants must **apply to DEAT for a CWDP**.
- (4) Any person **who at the commencement of this Act is discharging effluent** into coastal waters who is not authorised to do so in terms of a general authorisation (S 2) must apply for a CWDP—
- (a) within **24 months** if the discharge is in terms of a **licence or authorisation** under the  
**National Water Act**; or
- (b) within **36 months** if the discharge is a **continuation of an existing lawful water use**  
**its sections 32 or 33 of the National Water Act**.
- (5) Unless directed otherwise, it is not an offence to discharge effluent into coastal waters if—
- (a) that person has made an application under subsection (4); or
- (b) the applicable time period has not yet expired.





# CHAPTER 8 - MARINE AND COASTAL POLLUTION CONTROL

## Discharge of effluent into coastal waters

69. (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 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 conditions set**;
  - (d) **must comply with any applicable waste standards or water management practices prescribed** under this Act, the National Water Act or any Act of Parliament dealing with waste specifically; and
  - (e) must **register** the discharge with the department responsible for water affairs.
- (7) The Minister must take into account all relevant factors, **including—**
- (a) the **interests of the whole community**;
  - (b) the **socio-economic impact**;
  - (c) the **coastal management programmes and estuarine management plans**;
  - (d) the likely **impact** of the proposed disposal;
  - (e) the Republic's **obligations under international law**;
  - (f) the **factors listed in section 27 of the National Water Act**; and
  - (g) any other factors that may be prescribed.



69. (8) The Minister **may not grant a CWDP** if doing so is likely—
- (a) to **cause irreversible adverse effects that cannot satisfactorily be mitigated;**
  - (b) to **prejudice the achievement of a coastal management objective** contained in a CMP; or
  - (c) to be **contrary to the interests of the whole community.**
- (9) (a) The Director-General (DG) must within **five years** —
- (i) **review all existing effluent discharges** authorised before this Act; and
  - (ii) in **consultation with** the DG of the department responsible for **water affairs** undertake a review of all **existing discharges into estuaries** authorised before this Act.
- (b) **After the reviews** the DG must recommend to the Minister whether—
- (i) the discharge should be **prohibited;**
  - (ii) in the case of a discharge into the sea, whether or not **a permit should be issued;**
  - (iii) in the case of a discharge into an estuary, whether or not the discharge should be authorised in terms of a permit issued under this Act and a permit under the Water Act.
- (10) The Minister must decide whether or not to issue a permit, but **before doing so** must give the **existing** holders of the authorisations **an opportunity of making representations.**
- (11) **Every three years a report must be submitted 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 performing functions **enter into an agreement with any member of Cabinet.**



# Prohibition of incineration or dumping at sea

70. (1) 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 (EEZ); or
    - (ii) **aboard a South African vessel;**
  - (b) **import any waste** or other material to be **dumped** or **incinerated** at sea within SA's EEZ;
  - (c) **export any waste or other material to be dumped or incinerated—**
    - (i) on the **high seas**; or
    - (ii) in an area of the sea **under the jurisdiction of another state;**
  - (d) **load any waste or other material to be dumped or incinerated at sea onto any vessel, aircraft, platform or other structure, without a dumping permit;**
  - (e) except on the authority of a dumping permit—
    - (i) **dump at sea any waste or other material within the EEZ; or**
    - (ii) **dump from a South African vessel, aircraft, platform or man-made structure at sea, any waste or other material on the high seas; or**
  - (f) **dump any waste or other material in the sea under the jurisdiction of another state, except with permission of that state.**
- (2) It is a **defence** to show—
- (a) that **adverse weather** necessitated the dumping or incineration (D/I) for **safety reasons**; or
  - (b) that there was a **danger to human life** or a **real threat to the vessel/structure**; and
  - (c) that the D/I **was conducted in a manner that minimised adverse effects** and was without delay **reported to the Department.**



# Dumping permits

71. (1) A person who wishes to dump at sea must—
- (a) **apply to the Minister** for a **dumping permit**; and
  - (b) pay the **prescribed fee**.
- (2) When deciding an application for a dumping permit the **Minister must consider**—
- (a) the **Waste Assessment Guidelines** set out in **Schedule 2**;
  - (b) any **coastal management programme** applicable in the area;
  - (c) the likely **environmental impact** of the proposed;
  - (d) **National legislation dealing with waste**;
  - (e) the **interests of the whole community**; and
  - (f) any other factors that may be prescribed.
- (3) The Minister **may only grant** a dumping permit for—
- (a) **dredged material**;
  - (b) **sewage sludge**;
  - (c) **fish waste**, or material resulting from industrial fish processing operations;
  - (d) **vessels and platforms** or other **man-made structures** at sea;
  - (e) **inert, inorganic geological material**;
  - (f) **organic material of natural origin**; or
  - (g) **bulky items primarily comprising iron, steel, concrete and similarly non-harmful materials** for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping at sea.



71. (4) The Minister **may 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); or
    - (ii) material which is capable of **creating floating debris** or **pollution** of the marine environment **which can be removed** before dumping;
  - (b) dumping—
    - (i) is likely to cause **irreversible adverse effects** that **cannot** satisfactorily be **mitigated**;
    - (ii) would cause a **serious obstacle to fishing or navigation**;
    - (iii) would prejudice the **achievement of any coastal management objective**;
    - (iv) would be **contrary to the obligations of the Republic under international law**; or
    - (v) would be **contrary to the interests of the whole community**.
- (5) A dumping permit must be issued for a **period of not more than two years** but may be **renewed** for a further period of **not more than two years**.



# Emergency dumping at sea

72. (1) The Minister may in relation to any application for a dumping permit **dispense with any prescribed procedure if—**
- (a) the dumping is necessary **to avert an emergency** that poses an **unacceptable risk to the environment** or to **human health or safety**; and
  - (b) there is **no other feasible solution**.
- (2) **Before issuing a permit** to subsection (1), the Minister must consult with—
- (a) **any foreign state that is likely to be affected** by the proposed dumping at sea; and
  - (b) the **International Maritime Organisation (IMO)**.
- (3) The **Minister must—**
- (a) as far as possible **follow recommendations of the IMO for permit conditions**; and
  - (b) **inform the IMO** of any action undertaken.





# National action list

- 73.(1) The Minister must **progressively and subject to available resources**, develop a **national action list** to **provide a mechanism for screening waste and other material** on the basis of their **potential effect on human health and the marine environment**.
- (2) The national action list must—
- (a) be developed in accordance with the **Waste Assessment Guidelines** set out in **Schedule 2**; and
  - (b) contain the prescribed information.



# CHAPTER 9 - APPEALS

74. (1) A person to whom a **coastal protection notice**, a **coastal access notice** or a **repair and removal notice** has been issued, may lodge a written appeal with—
- (a) the **Minister** if the notice was **issued by an MEC**; or
  - (b) the **MEC**, if the notice was **issued by a municipality** or a **person exercising powers delegated by the MEC**.
- (2) A person who is **dissatisfied with any decision** taken to issue, refuse, amend, suspend or cancel an authorisation, may lodge a written appeal with—
- (a) the **Minister**, for a **decision by a person exercising powers delegated by Minister**; or
  - (b) the **MEC**, if the decision was taken by—
    - (i) **a person exercising delegated powers** of the MEC;
    - (ii) a **provincial organ of state**; or
    - (ii) a **municipality**.
- (3) An **appeal must**—
- (a) be lodged within **30 days of the appellant being notified** or within **60 days** of the relevant decision being announced;
  - (b) state clearly the grounds of the appeal;
  - (c) state briefly the facts on which the appellant relies and include any relevant information that was not placed before the decision-maker; and
  - (d) comply with any other requirements that may be prescribed.



- 74 (4) **An appeal** under this section **does not suspend** an authorisation or an exemption, or any provision or condition of an authorisation, or any notice issued under Chapter 7, **unless the Minister or MEC directs otherwise.**
- (5) The Minister or MEC **may extend the period** within which an appeal may be lodged.
- (6) The Minister or MEC may **dismiss an appeal that he or she considers to be trivial, frivolous or manifestly without merit.**
- (7) **Appeals against** a decision involving an **integrated environmental authorisation** must be dealt with in terms of the NEMA.



# Advisory Appeal panel

75. (1) The **Minister** or an **MEC** may **appoint an advisory appeal panel**.
- (2) An advisory appeal panel must consist of an **uneven number of members**.
- (3) The members appointed by the Minister or MEC must—
- (a) have **suitable qualifications and experience** relating to the matters being considered; and
  - (b) be **committed to the objects of this Act**.
- (4) A person **may not be appointed** as a member of the appeal panel if he or she—
- (a) was **involved in the making of the decision** appealed against;
  - (b) or **close family member** of that person, **has a personal or private interest** in the appeal;
  - (c) is an **unrehabilitated insolvent**;
  - (d) has, as a result of **improper conduct**, **been removed from an office of trust**; or
  - (e) has been declared by a court to be **mentally ill or disordered**.
- (5) 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 advisory appeal panel who is **not** an employee of an organ of state.



# Interim orders by Minister or MEC

76. (1) The Minister or MEC **may make an interim order**, that is equitable or appropriate to achieve the objects of this Act.
- (2) **An interim order may—**
- (a) **preserve existing rights** or an **existing state of affairs**;
  - (b) provide for **interim protection of the coastal environment**;
  - (c) **suspend or temporarily stay a notice** or any part of it; or
  - (d) deal with **procedural issues**.
- (3) The Minister or an MEC may make an interim order at his or her own initiative, or in response to an application by the appeal panel or a party to the appeal proceedings.
- (4) If a party to the proceedings applies for an interim order, the Minister or MEC must give the parties to the proceedings **a reasonable opportunity to make oral or written submissions**, but may make an interim order **pending the making of submissions by the parties**, if the Minister or MEC has reason to believe that doing so would be just or desirable in order to protect the coastal environment.



# Proceedings of advisory appeal panel

77. (1) The chairperson of an advisory appeal panel decides when and where the panel meets.
- (2) An advisory appeal panel must give the appellant, the person who made the decision or gave the notice appealed against, and any other interested and affected parties, **a reasonable opportunity of making written submissions**, and **may allow oral representations** to be made.
- (3) An advisory appeal panel—
- (a) must act fairly;
  - (b) may determine its own procedures;
  - (c) may convene hearings and make orders concerning preliminary and procedural matters;
  - (d) may summon and examine witnesses on oath;
  - (e) must, in considering the merits of an appeal, have regard to—
    - (i) the objects of this Act; and
    - (ii) any relevant coastal management objectives or standards and relevant policies; and
    - (iii) guidelines by the Department or the provincial lead agency.
- (4) An advisory appeal panel must give a **written report** to the Minister or MEC setting out its **findings** and **recommendations**.
- (5) The **decision of the majority** of the members of an advisory appeal panel is the decision of the panel, but any **dissenting opinions must be recorded** in the report of the panel.





# Determination of appeal by Minister or MEC

- 78.(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 ,vary the decision, or set aside the decision and make a new decision;** or
  - (c) **refer the appeal back to the appeal panel** with directions to investigate and consider specific facts or issues.
- (2) In determining an appeal the Minister or MEC must have regard to—
- (a) the objects of this Act;
  - (b) any relevant coastal management objectives; and
  - (c) the findings and recommendations of the appeal panel, **but is not bound by them.**



# CHAPTER 10 - ENFORCEMENT

## Offences

79. (1) A person is guilty of a **category one offence** if that person –
- (a) **discharges effluent** into coastal waters in contravention of section 69;
  - (b) **incinerates** at sea any waste or material in contravention of section 70;
  - (c) **loads, imports or exports** any waste or other material **to be dumped** or **incinerated** at  
sea in contravention of section 70;
  - (d) **dumps** any waste at sea in contravention of section 70;
  - (e) **dumps** any waste or other material at sea **without a dumping permit** in  
contravention  
of section 70;
  - (f) **alters any authorisation;**
  - (g) **fabricates or forges** any document for the purpose of passing it off as an  
authorisation;
  - (h) passes, uses, alters or has in possession any **altered or false document**  
purporting to  
be an authorisation; or
  - (i) **makes any false statement or report**, for the purpose of obtaining or objecting  
to an authorisation.



# Offences

79. (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
  - (c) 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).
- (4) 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).



# Penalties

80. (1) A person who is guilty of a **category one offence** may be sentenced to a fine of up to **R5 000 000** or **imprisonment for a period of up to ten years**, or to **both** such fine and imprisonment.
- (2) A person who is guilty of a **category two offence** may be sentenced on a **first conviction** for that offence to a fine of up to **R500,000** or to **imprisonment** or **community service** for a period of up to **five years**, or to **both** such fine, imprisonment and community service.
- (3) A person who is guilty of a **category three offence** may be sentenced on a first conviction for that offence to a fine of up to **R50,000** or **community service for a period of up to six months** or to **both** such fine and community service.
- (4) A person who is guilty of a **category two or three offence** may be sentenced on a **second conviction** for that offence **as if** he or she has committed a **category one or two offence, respectively**.
- (5) A court that sentences any person—
- (a) to **community service** for an offence must impose a form of community service **which benefits the coastal environment**;
  - (b) for any offence in terms of this Act, **may suspend, revoke or cancel an authorisation** granted to the offender under this Act.



# Penalties

- » **80.** (1) A person who is guilty of a category one offence referred to in section 79(1) may be sentenced to a fine of up to R5 000 000 or imprisonment for a period of up to ten years, or to both such fine and imprisonment.
- » (2) A person who is guilty of a category two offence referred to in section 79(2) may be sentenced on a first conviction for that offence to a fine of up to R500,000 or to imprisonment or community service for a period of up to five years, or to both such fine, imprisonment and community service.
- » (3) A person who is guilty of a category three offence referred to in section 79(3) may be sentenced on a first conviction for that offence to a fine of up to R50,000 or community service for a period of up to six months or to both such fine and community service.
- » (4) A person who is guilty of a category two or three offence may be sentenced on a second conviction for that offence as if he or she has committed a category one or two offence, respectively.
- » (5) A court that sentences any person—
  - » (a) to community service for an offence in terms of this Act must impose a form of community service which benefits the coastal environment, unless it is not possible to impose such a sentence in the circumstances;
  - » (b) for any offence in terms of this Act, may suspend, revoke or cancel an authorisation granted to the offender under this Act.



# Jurisdiction of courts

**81.** If a person is charged with the commission of an offence in terms of this Act on, in or above coastal waters, **a court whose area of jurisdiction abuts on the coastal** waters has jurisdiction in the prosecution of the offence.



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# Actions in relation to coastal public property

82. The **Minister, MEC or a municipality** concerned may—

(a) **institute legal proceedings** or take other appropriate measures—

- (i) to prevent damage, or recover damages for harm suffered to coastal public property or the coastal environment; or
- (ii) to abate nuisances affecting the rights of the public in its use and enjoyment of coastal public property; and

(b) **accept service of legal processes and defend any legal proceedings** instituted in connection with coastal public property.



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# CHAPTER 11 - GENERAL POWERS AND DUTIES

## Part 1

### Regulations by Minister

83. (1) The Minister may make regulations relating to any matter which this Act requires to be dealt with in regulations or that may be necessary to facilitate the implementation of this Act, including, but not limited to, regulations relating to —
- (a) the implementation and enforcement of the national coastal management programme;
  - (b) the sustainable use of coastal resources in order to address poverty in communities dependent on coastal resources for their livelihood;
  - (c) the sustainable use of coastal resources;
  - (d) coastal public property, including regulations concerning—
    - (i) public access to coastal public property;
    - (ii) the rehabilitation of coastal public property;
    - (iii) fees, costs, and rents for the use of coastal public property; and
    - (iv) research conducted within, or in respect of, coastal public property;
  - (e) the type and format of data to be submitted to the Department or other organs of state for the purposes of monitoring the coastal environment and the implementation of this Act or maintaining a coastal information system;
  - (f) the establishment of national norms, standards and frameworks to implement this Act, including systems, guidelines, protocols, procedures, standards and methods, concerning—
    - (i) the content and regular revision of the coastal management programmes of provinces and municipalities;
    - (ii) the implementation and enforcement of coastal management programmes;
    - (iii) the monitoring of the implementation of coastal management programmes and the performance of any functions contemplated in this Act including indicators to evaluate effectiveness and progress;
    - (iv) the amendment of coastal zoning schemes;
    - (v) the quality of coastal public property and coastal ecosystems;
    - (vi) the factors that must be taken into account when deciding applications;
    - (vii) the circumstances in which exemption may be given from compliance with a coastal management programme;
    - (viii) the uses of the coastal zone that do not conform with the relevant coastal zoning scheme;
    - (ix) the outcomes that must be achieved by managing and treating all or any category of effluent, discharges from storm-water drains, or waste or other material, before it is discharged or deposited on or in coastal public property or in a place within the coastal zone from where it is likely to enter coastal public property, including those relating to the kind, quantity and characteristics of effluent, waste or other material that may be discharged or deposited;
    - (x) who should monitor and analyse effluent, waste or other material referred to in paragraph (ix) and the methods that should be used to do so;
    - (xi) the appointment, training, powers and supervision of voluntary coastal officers;
    - (xii) public safety and behaviour on coastal public property;



- 83 (1) (g) the procedures to be followed with the lodging and consideration of applications for authorisations including –
- (i) the conditions with which applicants must comply before or after the lodging of their applications;
  - (ii) the application fees to be paid;
  - (iii) the authorities that will be competent to issue the different categories of authorisation;
  - (iv) the consultation procedures to be followed with organs of state and other interested and affected parties;
  - (v) the authorities whose consent is required before permits may be issued;
  - (vi) the procedures for objecting to such applications;
  - (vii) the powers of issuing authorities when considering and deciding such applications;
  - (viii) the factors that must be taken into account when deciding applications;
  - (ix) the circumstances in which applications must be refused or may be approved and guidelines as to the conditions on which permits may or must be issued;
  - (x) the bid process to be followed for the award of coastal leases and coastal concessions;
- (h) the contents of authorisations;
- (i) the giving of security in respect of any obligation that may arise from carrying out activities authorised by permits, coastal leases or coastal concessions, and the form of such security;



- 83 (1)(j) the procedure to be followed in connection with the lodging and consideration of appeals in terms of Chapter 9, including—
- (i) the fees to be paid;
  - (ii) the conditions with which appellants must comply before or after the lodging of their appeals;
  - (iii) the powers of, and the procedure to be followed by, an MEC when considering and deciding such appeals;
  - (iv) the circumstances in which a temporary stay may be granted in the carrying out of notices in terms of section 59 or 60, or an amendment, revocation, suspension or cancellation of permits, leases or concessions in terms of section 68;
  - (k) methods, procedures and conditions of enforcing compliance with authorisations;
  - (l) the issuing and contents of notices to persons who have contravened or failed to comply with—
    - (i) a provision of this Act;
    - (ii) a coastal management programme; or
    - (iii) a condition of a permit, coastal lease or coastal concession;
  - (m) training, education and public awareness programmes on the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources;
  - (n) the presence and use of vehicles and aircraft within the coastal zone;
  - (o) the presence and recreational use of vessels on coastal waters ;
  - (p) the seizing, removal and disposal of vehicles, vessels, aircraft or property suspected of being used in the commission of an offence under this Act and of coastal resources suspected of having been illegally obtained; and
  - (q) methods, procedures and conditions for obtaining access to relevant information, including entry to private property.
- (2) The Minister must obtain the consent of the Minister of Finance before making any regulation that—
- (a) will entail the expenditure of funds in future years; or
  - (b) prescribes application fees for, or other monies in relation to, dumping permits or coastal waters discharge permits.
- (3) The Minister must consult with –
- (a) the Minister of Finance before making any regulations imposing fees, costs or rents;
  - (b) the Minister 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.



# Regulations by MECs

84. (1) The MEC may after consulting the Minister, make regulations relating to—
- (a) the implementation and enforcement of the coastal management programme of the province;
  - (b) the management of the coastal protection zone within the province;
  - (c) the use of coastal public property for recreational purposes;
  - (d) the impounding, removal and disposal of vehicles, vessels, aircraft or property found abandoned on coastal public property;
  - (e) the granting of permission for the erection, placing, alteration or extension of a structure that is wholly or partially seaward of a coastal set-back line and the process to be followed for acquiring such permission, including, the authority by whom, the circumstances in which, and the conditions on which, such permission may be given;
  - (f) the implementation within the province of any national norm, framework or standard referred to in section 83(1)(f);
  - (g) the management of special management areas; or
  - (h) any other matter referred to in section 83(1), other than in paragraph (f) of that section, that may be necessary to facilitate the implementation of this Act in the province.
- (2) Any regulation which will entail the expenditure of funds in future years may be made only with the concurrence of the MEC responsible for finance in the province.



# General provisions applicable to regulations

85. (1) The Minister or MEC must **publish draft regulations** for public comment.
- (2) Subsection (1) need not be applied in the case of a **minor or a mere technical** amendments.
- (3) Regulations made in terms of section 83 or 84 may—
- (a) **restrict, prohibit or control any act** that may have an **adverse effect** on coastal environment, either absolutely or conditionally;
  - (b) **apply generally**—
    - (i) **throughout the Republic or province, a specified area or category of areas;**
    - (ii) **to all persons** or only to a **specified category** of persons;
    - (iii) **to all prohibited activities** or only to a **specified activity or category of activities;** or
    - (iv) **to all types of waste or other materials** or only to **specified waste** or other material or a category of waste or other material;
  - (c) differentiate between different—
    - (i) areas or categories of areas;
    - (ii) persons or categories of persons;
    - (iii) activities or categories of activities; or
    - (iv) types of wastes or other materials or categories of types of waste or other materials;
  - (d) provide that any person who contravenes or fails to comply with a provision thereof is **guilty of an offence** and liable on conviction to—
    - (i) **imprisonment for a period not exceeding two years;**
    - (ii) an **appropriate fine;** or
    - (iii) **both** such fine and imprisonment.



# Amendment of Schedule 2

**86.** The Minister may **by notice in the *Gazette*** amend **Schedule 2** so as to ensure that it continues to give effect to the Republic's obligations under international law



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## **Part 2**

### ***Powers to be exercised by Minister and MEC***

#### **Powers to be exercised by Minister**

**87.(1)** The Minister must exercise the powers granted to the MEC in terms of section 22 **to excise all or part of a protected area from the coastal protection zone** or in terms of section 23 to declare a special management area, if all or any part of that area—

- (a) extends into the sea for more than 500 metres;**
- (b) is a national protected area** as defined in the Protected Areas Act;
- (c) straddles a coastal boundary between two provinces;** or
- (d) extends up to, or straddles, the borders of the Republic of South Africa.**

**(2)** If subsection (1) applies, references in sections 22, 23 and 24, to the MEC must be read as reference to the Minister and the reference in section 23 to the Minister must be read as a reference to the MEC.





# Directives by MEC to municipalities

- 88.(1) **A MEC may direct a municipality** to take specified measures if the municipality is not taking adequate measures to—
- (a) **prevent or remedy adverse effects** on the coastal environment;
  - (b) **adopt or implement a municipal coastal management programme;** or
  - (c) **give effect to the provincial coastal management programme.**
- (2) The MEC may **not issue a directive** under subsection (1) **without first consulting with the municipality.**
- (3) If the municipality does not comply with a directive the MEC may use any powers granted to the MEC under this Act to take measures to prevent or remedy adverse effects on the coastal environment, to implement or monitor compliance with provincial norms and standards, or to give effect to the provincial coastal management programme.



## Part 3 - Delegations

### Delegation by Minister

89. (1) The Minister may delegate any power or duty assigned to the Minister to—
- (a) the **Director-General** or to **other officials** in the Department;
  - (b) the **MEC, by agreement** with that MEC; or
  - (c) **any other organ of state, statutory functionary, traditional council or management authority of a special management area**, by agreement.
- (2) A delegation in terms of subsection (1)—
- (a) **is subject to any limitations, conditions and directions** the Minister may impose;
  - (b) is subject to **consultation with the relevant MEC** if the organ of state to whom the power or duty is **delegated is a municipality**;
  - (c) must be in **writing**;
  - (d) may include the **power to sub-delegate**; and
  - (e) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Minister must **give notice in the Gazette** of any delegation.
- (4) The Minister may confirm, vary or revoke any decision made in consequence of a delegation or sub-delegation in terms of a provision of this Act or of a statute repealed by this Act.
- (5) The Minister—
- (a) **may not delegate** a power or duty vested in the Minister—
    - (i) to make regulations;
    - (ii) to publish notices in the *Gazette*; or
    - (iii) to appoint the members of the National Coastal Committee; and
  - (b) **may withdraw by notice in writing any delegation.**



# Enforcement by Minister

90. (1) The Minister request a MEC to take specified measures if the Minister is satisfied that the MEC is not taking adequate measures to—
- (a) **prevent or remedy adverse effects** on coastal public property;
  - (b) **implement or monitor compliance with national norms and standards;** or
  - (c) **give effect to the national coastal management programme.**
- (2) If the MEC does not comply with a request the Minister may exercise any powers given to the MEC 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;
  - (b) **to take measures and to recover costs in terms of section 61;** and
  - (c) **to allow temporary occupation of land** within the coastal zone and to take other measures in terms of section 67.
- (3) The Minister may not take any measures under subsection (2) **without first consulting with the MEC.**

( **NOTE** Insert new text under (1) , perhaps between (a) and (b). “ **establish set-back lines**” . This text was previously wrongly located under SLA version of 5 Sept under that document’s section 88. It was agreed with SLA to move this to section 90 of that document. In other words it had to fall in the section “Enforcement by Minister” and not “Directives by MEC” )



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# Delegation by MECs

91. (1) The MEC may delegate any power or duty assigned or delegated to the MEC to—
- (a) the head of the provincial lead agency;
  - (b) any other organ of state or a statutory functionary, traditional council or management authority of a special management area, by agreement; or
  - (c) establish set-back lines, to implement or monitor compliance with provincial norms and standards.
- (2) A delegation in terms of subsection (1) –
- (a) is subject to any limitations, conditions and directions the MEC may impose;
  - (b) must be in writing;
  - (c) may include the power to sub-delegate; and
  - (d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The MEC may confirm, vary or revoke any decision taken as a consequence of a delegation or sub-delegation in terms of this section.
- (4) The MEC –
- (a) **may not delegate** a power or duty vested in the MEC—
    - (i) to make regulations; or
    - (ii) to publish notices in the *Gazette*; or
    - (iii) to appoint the members of the Provincial Coastal Committee contemplated in section 39; and
  - (b) may withdraw any delegation by notice in writing.



## **Part 4**

### **General matters**

#### **Urgent action by Minister**

- 92.(1)** The Minister may issue a **verbal directive** to any responsible person to **stay an activity** if such activity poses—
- (a) an immediate risk of serious danger to the public or property; or**
  - (b) an immediate risk of serious damage, or potentially significant detriment, to the environment.**
- (2)** Subject to subsection (3), a verbal directive must be **confirmed in writing** at the earliest opportunity, which must be **within seven days**.
- (3)** When issuing a verbal directive contemplated in subsection (1), the provisions of section 59(1), (3), (4), or 60(1), (3), (4), apply with the necessary changes.



# Information and reporting on coastal matters

93. (1) The Minister must **progressively, and within the available resources** of 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.
- (2) The **MEC** must—
- (a) prepare a **report on the state of the coastal environment in the province** every **four** years which must contain any information prescribed by the Minister;
  - (b) **update the report** once applicable information pertaining to the coastal environment under the jurisdiction of the MEC becomes available; and
  - (c) **submit the report and every update to the Minister.**
- (3) The **Minister** must prepare and regularly update a **national report on the state of the coastal environment** based on provincial reports submitted to the Minister.



# Co-ordination of actions between provinces and municipalities

**94.** The **MEC** must—

- (a) liaise with coastal municipalities** in the province to co-ordinate actions taken in terms of this Act by provincial organs of state in the province with actions taken by municipalities; and
- (b) monitor compliance by such municipalities with this Act.**



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# CHAPTER 12 - MISCELLANEOUS MATTERS

## Part 1

### *Transitional provisions*

#### Existing leases on, or rights to, coastal public property

95. (1) Subject to subsection (3), this Act does not, affect the continuation of—
- (a) a **lawful lease** that forms part of coastal public property, including a port or harbour, or
  - (b) a **vested right to use or exploit any specific coastal resource on or in coastal public property**, including a right to **prospect or mine**.
- (2) The holder of an **existing lease or right** must within **24 months** –
- (a) **notify the Minister** of the existence of that lease or right; and
  - (b) provide the Minister with a **copy of any documents** evidencing that lease or right.
- (3) A person may undertake any activity authorised by an **existing lease or right** without obtaining a coastal lease or a coastal concession for a maximum period of –
- (a) **48 months**, if the holder of that lease or right **complies with subsection (2)**; or
  - (b) **24 months**, if the holder of that lease or right does **not comply with subsection (2)**.
- (4) After the end of the period referred to in subsection (3), no person may continue with or carry out an activity that was permitted under that lease or right except in terms of a coastal lease or a coastal concession awarded to that person in terms of Chapter 7.
- (5) An application by a person contemplated in subsection (4) for a coastal lease or coastal concession—
- (a) must—
    - (i) be considered taking into account the existing lease or right and any losses or hardships the applicant and other persons may suffer; and
    - (ii) be decided within six months from the date the application was lodged;
  - (b) may be **refused** if –
    - (i) the activity applied for is likely to have **serious adverse effects** on the coastal environment; or
    - (ii) the Minister has reason to believe that granting the application would be **inconsistent** with the **objects of the Act** or would **prejudice the attainment of a coastal management objective**.



# Unlawful structures on coastal public property

96. (1) **Subject to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act**, and subsection (4), a person, who before this Act took effect, had **unlawfully** constructed a building or other structure on coastal public property or who, when this Act took effect, **occupied a building or other structure unlawfully built on coastal public property** must, **within 12 months** of the commencement of this Act, either –
- (a) **apply for a coastal lease** in terms of Chapter 7; or
  - (b) **demolish the building or structure** and as far as reasonably possible, **restore the site** to its condition before the building or other structure was built.
- (2) If a person referred to in subsection (1) applies for a coastal lease in accordance with subsection (1) and the application is **refused** by the Minister, that person must **demolish the building or structure** and restore the site.
- (3) If a person who in terms of subsection (2), fails to do so the Minister or the MEC may, under section 60, issue a written repair or removal notice to that person.
- (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;
  - (b) any legal proceedings instituted 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; or
  - (c) any rights a person may have in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998).



# Existing lawful activities in coastal zone

97. (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 96(2).



# Repeal of legislation

**98.** The laws referred to in Schedule 1 are hereby repealed to the extent indicated in the third column of that Schedule.



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# Savings

**99.(1)** Subject to section 6 **any regulation** made in terms of a provision repealed under section 98 **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.

(2) Anything else done in terms of legislation repealed in terms of section 98 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.



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# Part 2

## General

### Limitation of liability

**100. Neither the State nor any other person is liable for any damage or loss caused by—**

(a) the exercise of any power or the performance of any duty in terms of this Act; or

(b) the failure to exercise any power, or perform any duty in terms of this Act,

**unless** the exercise of or failure to exercise the power, or performance or failure to perform the duty was **unlawful, negligent or in bad faith.**



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# Short title

**101.** This Act is called the **Integrated Coastal Management Act, 2007**, and takes effect on a date or dates determined by the President by proclamation in the *Gazette*.



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# SCHEDULE 1

## LAWS REPEALED

*(Section 98)*

Number and year of the law	Short title	Extent of repeal or amendment
Act No. 21 of 1935	Sea-shore Act, 1935	Repeal of the whole, to the extent that it has not been assigned to provinces.
Act No. 73 of 1980	Dumping at Sea Control Act, 1980	Repeal of the whole



# **SCHEDULE 2**

## ***(Section 71)***

- » **GUIDELINES FOR THE ASSESSMENT OF WASTES OR OTHER MATERIAL THAT MAY BE CONSIDERED FOR DUMPING AT SEA**
- » **(“the Waste Assessment Guidelines”)**
- » **GENERAL**
- » **1.** This Schedule sets out guidelines for reducing the necessity for dumping at sea in accordance with Schedule II to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters adopted on 7 November 1996.



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# WASTE PREVENTION AUDIT

- » **2.** The initial stages in assessing alternatives to dumping at sea should, as appropriate, include an evaluation of –
  - » (a) the types, amounts and relative hazard of wastes generated;
  - » (b) details of the production process and the sources of wastes within that process; and
  - » (c) the feasibility of the following waste reduction or prevention techniques:
    - » (i) product reformulation;
    - » (ii) clean production technologies;
    - » (iii) process modification;
    - » (iv) input substitution; and
    - » (v) on-site, closed-loop recycling.



# Continued:

- » **3.** In general terms, if the required audit reveals that opportunities exist for waste prevention at its source, an applicant for a permit is expected to formulate and implement a waste prevention strategy, in collaboration with the relevant local, provincial and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions must assure compliance with any resulting waste reduction and prevention requirements.
- » **4.** For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local, provincial and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.



# CONSIDERATION OF WASTE MANAGEMENT OPTIONS

- » **5.** Applications to dump wastes or other material must demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:
  - » (a) re-use;
  - » (b) off-site recycling;
  - » (c) destruction of hazardous constituents;
  - » (d) treatment to reduce or remove the hazardous constituents; and
  - » (e) disposal on land, into air and in water.
- » **6.** The Minister will refuse to grant a permit if it is established that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping at sea and the alternatives.



# CHEMICAL, PHYSICAL AND BIOLOGICAL PROPERTIES

- » 7. A detailed description and characterisation of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterised that a proper assessment cannot be made of its potential impacts on health and the environment, that waste may not be dumped.
- » Characterisation of the wastes and their constituents must take into account–
  - » (a) origin, total amount, form and average composition;
  - » (b) properties: physical, chemical, biochemical and biological;
  - » (c) toxicity;
  - » (d) persistence: physical, chemical and biological; and
  - » (e) accumulation and biotransformation in biological materials or sediments.



# ACTION LIST

- » **8.** In selecting substances for consideration in the Action List referred to in section 78, the Minister will give priority to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g., cadmium, mercury, organohalogens, petroleum hydrocarbons, and, whenever relevant, arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogens). An Action List can also be used as a trigger mechanism for further waste prevention considerations.
- » **9.** The Action List must specify an upper level and may also specify a lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:
  - » (a) wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping at sea through the use of management techniques or processes;
  - » (b) wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping at sea; and
  - » (c) wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping at sea can be determined.





# DUMP-SITE SELECTION

- » **10.** The Minister will require at least the following information before deciding whether or not to approve a site for dumping at sea:
- » (a) the physical, chemical and biological characteristics of the water-column and the seabed;
- » (b) the location of amenities, values and other uses of the sea in the area under consideration;
- » (c) the assessment of the constituent fluxes associated with dumping at sea in relation to existing fluxes of substances in the marine environment;
- » (d) the economic and operational feasibility; and
- » (e) any relevant coastal management objectives.



# ASSESSMENT OF POTENTIAL EFFECTS

- » **11.** Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the “Impact Hypothesis”. It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.
- » **12.** The assessment for dumping at sea must integrate information on waste characteristics, conditions at the proposed dump-site or dump-sites, fluxes, and proposed disposal techniques and specify the potential effects on the environment, human health, living resources, amenities and other legitimate uses of the sea. It must define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.
- » **13.** An analysis of each disposal option must be considered in the light of a comparative assessment of the following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option may not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping at sea option to be less preferable, a permit for dumping will not be given.
- » **14.** Each assessment must conclude with a statement supporting a decision to issue or refuse a permit for dumping at sea.



# MONITORING

- » **15.** Monitoring is used to verify that permit conditions are met - compliance monitoring - and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health - field monitoring. It is essential that such monitoring programmes have clearly defined objectives.
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# PERMIT AND PERMIT CONDITIONS

- » **16.** A decision to issue a permit will only be made if all impact evaluations are completed and the monitoring requirements are determined. The conditions of the permit must ensure, as far as practicable, that adverse effects are minimised and the benefits maximised. A dumping permit issued must contain data and information specifying –
  - » (a) the types and sources of materials to be dumped;
  - » (b) the location of the dump-site(s);
  - » (c) the method of dumping at sea; and
  - » (d) monitoring and reporting requirements.
- » **17.** The Minister will review permits for dumping at sea at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.



# CHAPTER 1: CHANGES MADE SINCE GAZETTED

## Chapter 1: Objectives and application of the Act

Chapter 1 deals with the objectives and application of the Act

### Changes made:

1. Only **minor editorial changes** were made to Chapter 1.



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# GOOD EXAMPLE OF DEVELOPMENT LAYOUT, NATURES VALLEY WC





**Thank You**

