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## GENERAL NOTICE

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### NOTICE 1401 OF 2001

#### INVITATION TO COMMENT ON PROPOSED REGULATIONS IN TERMS OF SECTION 44 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998): CONTROL OF VEHICLES IN THE COASTAL ZONE

The Minister of Environmental Affairs and Tourism hereby publishes proposed regulations in terms of section 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998): control of vehicles in the coastal zone.

All interested parties and organisations are invited to comment in writing on the proposed regulations and to direct comments to:

Mr S M Schneier, Marine and Coastal Management Branch, Department of Environmental Affairs and Tourism, Private Bag X2 ROGGE BAY, 8012, Fax No. (012) 418-2528 and/or by e-mail: [schneier@mcm.wcape.gov.za](mailto:schneier@mcm.wcape.gov.za).

Kindly provide the name, address, telephone number, fax number and/or e-mail address of the person or organisation submitting the comments.

Comments should reach the department not later than 29 June 2001.

M V MOOSA  
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

REGULATIONS IN TERMS OF SECTION 44 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT No. 107 OF 1998): CONTROL OF VEHICLES IN THE COASTAL ZONE

I, Mohammed Valli Moosa, Minister of Environmental Affairs and Tourism, acting under section 44 of the National Environmental Management Act, 1998, hereby make the regulations in the schedule.

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SCHEDULE

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Definitions

1 In these regulations-

"Act" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"authorized officer" means any person appointed as a fishery control officer in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), any person appointed to enforce the provisions of any provincial enactment which controls activities or processes which impact or may impact on the environment or any person appointed as a peace officer in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"beach" means unconsolidated sediment forming the unvegetated edge of the shoreline that extends from the low-water mark landwards to higher features of the coast such as dunes, cliffs or vegetated soil;

"coastal land-form" means a topographical feature resulting from geomorphological processes affecting the coastline and adjacent geological features;

"coastal zone" means the area adjacent to the shoreline characterized by coastal land-forms, including beaches, dunes and estuaries and their associated wetlands;

"dune" means a mound or ridge of loose wind-blown material, usually sand, whether covered by vegetation or not;

"estuary" means that portion of a river in which a rise and fall of the water-level takes place as a result of tidal action on a permanent or periodic basis, including a lagoon;

"local authority" means a municipality which is established in terms of legislation intended to give effect to section 151 of the Constitution of the Republic of South Africa Act, 1996 (Act no. 108 of 1996);

"Minister" means the Minister of Environmental Affairs and Tourism;

"proclaimed harbour" means any port or harbour which is proclaimed or established as such in terms of legislation for commercial or fishing purposes;

"provincial authority" means the provincial department responsible for environmental affairs;

"public road" means any road which is proclaimed or established in terms of legislation for public use;

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"relevant authority" means a local or provincial authority, or the Minister, as the case may be;

"vehicle" means any motorised conveyance which is designed to transport one or more persons and includes a trailer;

"wetland" means the area adjacent to an estuary that is periodically flooded as a result of tidal action.

#### Application of regulations

2. These regulations apply to the use of all vehicles in the coastal zone except vehicles being used-
  - (a) for official purposes by employees of any organ of state;
  - (b) in *bona fide* emergency or rescue situations;
  - (c) in mining activities which have been approved in terms of the Minerals Act, 1991 (Act No 50 of 1991);
  - (d) on a public road; or
  - (e) for official purposes within a proclaimed harbour.

#### General prohibition

3. Subject to regulation 2, no person may drive, use or operate any vehicle in the coastal zone, without an authorisation granted under regulation 4.

#### Authorisations

4. Subject to the provisions of these regulations, the relevant authority may upon consideration of an application submitted in terms of regulation 6 grant an authorisation for the use of a vehicle within the coastal zone-
  - (a) within the boundaries of a site which has been approved for boat-launching purposes in terms of these regulations;
  - (b) for scientific research; or
  - (c) for the carrying out of any activity which has been approved in terms of the provisions of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), provided that the use of a vehicle in respect of such activity has been approved by the Minister in terms of these regulations.

#### Applications to use a vehicle in the coastal zone

- 5 (1) An applicant for a permit to use a vehicle in the coastal zone must submit a written application to the relevant provincial authority.
- (2) All applications must be made on a form obtainable from the relevant authority.
- (3) All applications are subject *inter alia* to the following requirements being fulfilled-
  - (a) the application must fulfil the requirements of section 24(7) of the Act relating to the investigation, assessment and communication of the potential impact of the activity concerned:

- (b) should an applicant not be qualified to fulfil the requirements of section 24 (7) of the Act, the applicant must appoint an independent consultant to submit the application on his/her behalf;
  - (c) the applicant is solely responsible for all costs incurred in connection with the employment of the consultant or any other person acting on the applicant's behalf to comply with these regulations;
  - (d) the applicant must ensure that the consultant, in complying with these regulations, has the required expertise and ability to fulfil the requirements of section 24(7) of the Act.
- (4) If the applicant does not comply with any provision of regulations 5(3)(a)-(d), and does not immediately address such non-compliance after being made aware of it by the relevant authority, the application must be regarded as having been withdrawn.
- (5) The provincial authority must refer an application to the Minister for consideration where-
- (a) the site in question has been designated in terms of national or international legislation as an area of national or international importance;
  - (b) the Minister and the provincial authority jointly decide that the application should be considered by the Minister;
  - (c) a state department, the relevant provincial authority or a statutory body other than a local authority is the applicant;
  - (d) the authorisation has the potential to affect the environment across the borders between two or more provinces; or
  - (e) the application is being made in terms of regulation 4(c).
- (6) Save for the circumstances outlined in subregulations 5(a) to (e) above, the provincial authority may in terms of section 238 of the Constitution (Act 108 of 1996) delegate its authority to administer these regulations to a local authority, provided that:
- (a) the local authority has the competence and capacity to consider such applications in terms of the requirements of section 24(7) of the Act; and
  - (b) the local authority must refer an application to the relevant provincial authority for consideration if the local authority is the applicant.

#### Responsibilities of the relevant authority

#### 6. The relevant authority must-

- (a) ensure that officers, agents or consultants employed by it to evaluate applications submitted in terms of these regulations have the expertise required to evaluate compliance with the requirements of section 24(7) of the Act;
- (b) ensure that the evaluation and decisions required in terms of these regulations are made efficiently and within a reasonable time, subject to the applicant being informed in writing of any delays which may occur;
- (c) provide the applicant with any information in its possession which could assist the applicant in complying with these regulations;
- (d) not require from the applicant more than the minimum amount of information necessary to make an informed decision regarding the application;
- (e) not approve an application-
  - (i) should the approval thereof be inconsistent with the principles in Chapter 1 of the Act;
  - (ii) should the approval thereof pose a threat to the safety of the general public; or
  - (iii) unless it is satisfied that there is a legitimate need to approve the application;

- (9) in considering whether there is a legitimate need to approve the application, determine whether there are preferable alternatives to granting the application, based on the information submitted with the application in terms of the requirements of section 24(7) of the Act.

#### Consideration of application

7. The relevant authority may, after considering the application submitted in terms of these regulations-
- (a) refuse the application;
  - (b) grant the application with or without conditions;
  - (c) request the applicant to carry out further investigations and/or submit additional information; or
  - (d) request the applicant to consult with specific organizations, authorities, persons or interested parties in general and submit results of the required consultations.

#### Record of decision

- 8 (1) The relevant authority must issue a written record of the decision made in terms of these regulations to the applicant, and on request to any other interested party.
- (2) The record of the decision must include-
- (a) the geographic location of the area referred to in the application;
  - (b) a precise description of the boundaries of the area affected by the decision;
  - (c) the name, address and telephone number of the applicant;
  - (d) the name, address and telephone number of any consultant involved in the application;
  - (e) the decision of the relevant authority;
  - (f) the conditions of the authorisation, if any, including measures to mitigate, control or manage environmental impacts or to rehabilitate the environment;
  - (g) the reasons that led to the decision;
  - (h) the date of expiry or the duration of the authorisation;
  - (i) the name of the person to whom an appeal may be directed as contemplated in regulation 9(1);
  - (j) the signature of a person who represents the relevant authority; and
  - (k) the date of the decision.

#### Manner of appeal

- 9 (1) An appeal to the Minister in terms of section 43 of the Act must be made in writing within 30 days of the date on which the record of decision was issued to the applicant in terms of these regulations.
- (2) An appeal must state the grounds for the appeal and be accompanied by all relevant documents or copies thereof which are certified as true by a commissioner of oaths.

#### Law enforcement

- 10 (1) For the purpose of enforcing these regulations, any authorized officer may-

- (a) seize any vehicle if he or she has reasonable grounds to believe that it has been or is being used in the commission of an offence in terms of these regulations;
- (b) arrest any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations; or
- (c) issue a summons notice in terms of section 54 of the Criminal Procedure Act (Act 51 of 1977) to appear in a lower court, either on the spot or within a period of 30 days, to any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations.

(2) Any person issued with a summons notice in terms of regulation 10(1)(c) of these regulations may pay an admission of guilt fine of R1,000.00, in terms of section 57 of the Criminal Procedure Act.

#### Co-operation with officials

11 (1) Whenever an authorized officer exercises any power or performs any duty in terms of these regulations, he or she shall at the request of any person affected thereby, produce an identity card identifying the officer as an authorized officer in terms of these regulations.

(2) The driver of any vehicle shall immediately comply with any lawful instruction given or request made by an authorized officer.

(3) No person shall—

- (a) assault, obstruct, resist, delay, intimidate or otherwise interfere with an authorized officer in the performance of his or her duties;
- (b) incite or encourage any other person to assault, resist or obstruct any authorized officer while exercising or performing his or her powers or duties, or any other person lawfully acting under the orders of the authorized officer in his or her aid;
- (c) use threatening language or behave in a threatening or insulting manner or use abusive language or insulting gestures towards any authorized officer while exercising or performing his or her powers or duties, or towards any other person lawfully acting under the orders of an authorized officer in his or her aid;
- (d) fail to comply with the lawful requirements of any authorized officer or;
- (e) furnish to any authorized officer any particulars which are false or misleading.

#### Treatment of **seized** vehicles

12 (1) If any vehicle has been seized in terms of regulation 10(1), and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within 90 days of the detention or seizure, the Minister may apply to the court for it to be forfeited to the State and the court shall make such order as it shall deem fit.

(2) If the lawful owner of a seized vehicle cannot be traced within 90 days of such seizure it shall be forfeited to the State and **be** disposed of as the Director-General in his or her discretion shall consider fit.

(3) If the owner of a vehicle or the person having the possession, care or control of it at the time of its seizure is served with a summons or convicted of an offence in terms of these regulations and a fine is imposed, the vehicle shall **be** detained until all fines, orders for costs and penalties imposed in terms of these regulations have been paid.

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- (4) If any payment contemplated in subregulation 3 is not made within such time as the court may determine, the vehicle shall be forfeited to the State and be disposed of as the Director-General in his or her discretion shall consider fit.

#### Offences and penalties

- 13 Any person who contravenes any provision of these regulations shall be guilty of an offence and liable on conviction to a minimum fine of R2000 but not exceeding R10000, or to imprisonment for a minimum period of six months but not exceeding two years, or to both such fine and such imprisonment.

#### Forfeiture

- 14 (1) A court convicting any person of an offence under these regulations may, in addition to any other penalty, declare any vehicle used in committing the offence, or the rights of the convicted person to such vehicle, to be forfeited to the State.
- (2) Any vehicle ordered to be forfeited in terms of these regulations shall be disposed of as the Director-General in his or her discretion shall consider fit.

#### Date of commencement of regulations

- 15 Regulation 4 will commence six months after the date of promulgation, in relation to-
- (a) the use of a vehicle within a site which was used for boat-launching purposes and where infrastructure for boat launching purposes, such as launching ramps, existed prior to the date of promulgation of these regulations;
  - (b) the use of a vehicle for the purpose of carrying out scientific research, which research commenced prior to the date of promulgation of these regulations; and
  - (c) the use of a vehicle for the purpose of carrying out any activity referred to in regulation 4(c) where authorisation to carry out the activity was granted prior to the date of promulgation of these regulations.
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