
GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 150 OF 2013 DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT, 2008 (ACT NO. 24 OF 2008)

DRAFT CONTROL OF USE OF VEHICLES IN THE COASTAL AREA REGULATIONS

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby give notice of my intention to make the Control of Use of Vehicles in the Coastal Area Regulations, under section 83(1)(g), (n), (p) and (r) of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008), set out in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 (thirty) days after the publication of the notice in the *Gazette*, written representations or comments to the following addresses:

By post to: The Deputy Director-General: Department of Environmental Affairs
 Oceans and Coasts Branch
 Attention: Ryan Peter
 PO Box 52126
 V and A Waterfront
 Cape Town
 8002

By hand at: East Pier Building 2, East Pier Road, V and A Waterfront, Cape Town.

By e-mail: jpeter@environment.gov.za.

Any inquiries in connection with the notice can be directed to Ryan Peter at (021) 819 2490.

Comments received after the closing date may not be considered.



BOMO EDITH EDNA MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

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1. Definitions

In these Regulations, unless the context indicates otherwise, a word or expression that is defined in the Act bears the same meaning in these Regulations, and in addition-

"Act" means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

"authorised officer" means -

- (a) any person appointed as a fishery control officer in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);
- (b) an environmental management inspector appointed in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (c) all peace officers as defined in the Criminal Procedure Act, 1977; and
- (d) any person appointed by a management authority of a coastal protected area to enforce the provisions of legislation pertaining to the establishment or management of such area.

"beach or surf launch site" means a natural location within the coastal zone, with no slipway, jetty or other construction or structure, where a vessel may be launched directly into the water and includes a natural location which can only be accessed by a slipway onto the coastal area.

"Chief Director" means the Chief Director responsible for coastal management in the Department of Environmental Affairs;

"coastal area" means

- (a) coastal public property;
- (b) littoral active zone; and
- (c) any area between the high water mark and up to 500 meters landwards of the high water mark where dunes, wetlands, mangroves, lagoons, salt marshes, salt pans, mud flats occur, but not exceeding the boundary of the coastal zone as determined in the Act;

"Criminal Procedure Act" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

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

"emergency" means a serious situation or occurrence that happens unexpectedly or is reasonably foreseeable and that requires immediate action;

"fishing competition" means an interprovincial, national, or international recreational sport fishing competition sanctioned by, and held under the auspices of, the South African Shore Angling Association;

"harbour" means a port or harbour proclaimed in terms of any law and managed by an organ of State;

"integrated management plan" has the meaning assigned to it in the World Heritage Convention Act, 1999 (Act No. 49 of 1999);

"management authority" means the organisation or authority appointed in terms of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) or in terms of the World Heritage Convention Act, 1999 (Act No. 49 of 1999), to manage a coastal protected area including any authority or organisation who has been appointed or contracted to manage a coastal protected area in

terms of section 14 of the National Environmental Management: Protected Areas Act, 2003 or section 13 of the World Heritage Convention Act, 1999 (Act No. 49 of 1999);

"permissible use" means a use of a vehicle within the coastal area referred to in regulation 3 and for which a permit under these regulations is not required;

"physically disabled person" means a person with permanent severe mobility impairment who has been certified as such by the National Council for Persons with Physical Disabilities in South Africa;

"privately used launch site" means a site -

- (a) constructed adjacent to or proximate to privately owned property;
- (b) used by the owner or occupiers of such property to launch a vessel in the coastal area;
- (c) which is not for use by the general public;
- (d) where no fees or charges are imposed; and
- (e) excludes a beach or surf launch site.

"public launch site" means a site listed by notice in the *Gazette* in terms of the public launch site regulations, as a site where a vessel may be launched in the coastal zone, but excludes a privately used launch site;

"public launch site regulations" means the regulations published in terms of the Act relating to the listing and management of public launch sites;

"public road" has the meaning assigned to it in the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"relevant authority" means the Chief Director or the Minister as referred to in regulations 4 and 16;

"scientific research" means research carried out by a museum, recognised institute established for the purpose of scientific research, or research carried out by a registered research unit of a tertiary institution;

"tourism business" means a commercial business using vehicles in the coastal area for the purpose of conducting eco-tours and which employs tourist guides;

"tourist guide" means a tourist guide as defined in the Tourism Act, 1993 (Act No. 72 of 1993);

"use" in relation to a vehicle includes driving, operating, being conveyed by, or being seated in the driver's seat of a stationary vehicle;

"vehicle" means

- (a) any self-propelled conveyance which is designed to transport one or more persons on land including those designed for the construction or maintenance of infrastructure;
- (b) a trailer;
- (c) any motorised aircraft which may land in the coastal area; or
- (d) a vessel which is able to move on land.

"vehicle use launch site" means a public launch site listed by notice in the *Gazette* in terms of the public launch site regulations, as a site which allows a vehicle to be used to launch a vessel in the coastal area but excludes a privately used launch site;

"vessel" has the meaning assigned to it in the Act, but excludes non-motorised waterborne craft which do not require a vehicle or any other equipment to launch into the water.

2. General prohibition

- (1) No person may use a vehicle in the coastal area unless that use—
- (a) is a permissible use;
 - (b) is authorised in terms of a permit granted under regulation 4;
 - (c) is authorised in terms of an exemption granted under regulation 16; or
 - (d) is lawful in terms of regulation 18.

3. Permissible uses

- (1) Subject to section 58 of the Act, the following uses of vehicles within the coastal area are permissible without a permit or exemption granted under these regulations—
- (a) the use by any person of a vehicle –
 - (i) on a public road;
 - (ii) on private land by the owner or with the written permission of the owner or lawful occupier of that land;
 - (iii) on a road within a coastal protected area where written permission has been granted by the management authority of that coastal protected area, and provided that such use is authorised in the protected area management plan or Integrated Management Plan compiled by the management authority;
 - (iv) within a mining area as defined in section 1 of the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2008);
 - (v) in coastal public property within the operational harbour area that has already been physically modified from its original natural state; or
 - (vi) in an emergency in order to safeguard human life or health, property or any aspect of the environment;
 - (b) the use of a vehicle within a vehicle use launch site, or privately used launch site;
 - (c) the use by a physically disabled person of an electrically propelled wheelchair that is specifically designed and manufactured for use by such person;
 - (d) the use of a vehicle by an employee or agent of an organ of state acting in the course and scope of their employment or mandate, or by any person contracted by an organ of state, for the purposes of performing the public duties of that organ of state mandated by law; or
 - (e) the use of a vehicle by members of the National Sea Rescue Institute or Lifesaving South Africa for the purpose of performing the public duties of that organisation including authorised training exercises.

4. Permits to use vehicles in coastal area

- (1) A permit to use a vehicle in the coastal area may be issued by the Chief Director for the purposes of—
 - (a) carrying out a non-recreational activity in terms of a right, permit or exemption granted under the Act, the Marine Living Resources Act, 1998 (Act No. 18 of 1998) or the Sea Fishery Act, 1988 (Act No. 12 of 1988);
 - (b) scientific research;
 - (c) operating a tourism business;
 - (d) accessing private property provided there is no reasonable alternative access to the property;
 - (e) producing an advertisement, film, still photograph or a television programme;
 - (f) access by a physically disabled person;
 - (g) hosting a fishing competition; or
 - (h) the construction or maintenance of infrastructure authorised by a law.
- (2) An application for a permit shall be made to the Chief Director.
- (3) A permit may be issued subject to conditions as determined by the Chief Director.
- (4) (a) A permit may be issued for non-recreational activities in terms of sub-regulation 4(1)(a) if—
 - (i) the applicant pays the application fee if prescribed; and
 - (ii) the applicant demonstrates that the use of a vehicle is required in the coastal area to effectively carry out the non-recreational activity;(b) Such a permit may be issued for a maximum period of five years, provided that the permit will only be valid if the holder thereof is also the holder of a valid permit or exemption granted under the Act, the Marine Living Resources Act, 1998 (Act No. 18 of 1998) or the Sea Fishery Act, 1988 (Act No. 12 of 1988).
- (5) (a) A permit may be issued for scientific research in terms of sub-regulation 4(1)(b) if—
 - (i) the applicant demonstrates that the use of the vehicle is required to effectively carry out the scientific research and;
 - (ii) the applicant provides an approved research proposal from the research institution, organisation or tertiary institution or;
 - (iii) is in possession of a valid permit, licence or other written permission from an organ of state to conduct scientific research where required by law;

- (b) Such a permit may be issued for a maximum period of five years.
- (6) (a) A permit may be issued for tourism in terms of sub-regulation 4(1)(c) if-
 - (i) the applicant pays the application fee if prescribed;
 - (ii) the applicant demonstrates that the use of the vehicle is required to effectively conduct the tourism business;
 - (iii) the applicant provides proof of registration of its tour guides and copies of all marketing material for the intended tour in the coastal area;
 - (iv) the applicant provides an operational plan setting out the activities that will be undertaken during a tour, the number of trips per day, the length of a tour, the number of people per tour that can be accommodated and any equipment or infrastructure which will be utilised; and
 - (v) the applicant provides an environmental plan for the proposed vehicle use in the coastal area which plan must, as a minimum, address the following issues:
 - (aa) a detailed description of the environment that may be affected by the tourism activity, and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected or impacted on by the activity;
 - (bb) proposed management or mitigation measures that will be implemented to minimise environmental impacts and respond to any negative impact which may occur during the tourism activity;
 - (cc) measures to be taken to rehabilitate the affected environment if required; and
 - (dd) a description of any consultation process with interested and affected parties that was undertaken and a summary of any comments that were received during such consultation process.
- (b) Such a permit may be issued for a maximum period of five years.
- (7) (a) A permit may be issued to access private property in terms of sub-regulation 4(1)(d) if-
 - (i) the applicant provides proof that the use and occupation of the property are lawful; and
 - (ii) the applicant demonstrates that no reasonable alternative access route to the property exists.
- (b) Such a permit may be issued for a maximum period of five years.
- (8) (a) A permit may be issued for filming in terms of sub-regulation 4(1)(e) if-
 - (i) the applicant pays the application fee if prescribed;
 - (ii) the applicant provides an environmental plan for the proposed vehicle use in the coastal area which plan must, as a minimum, address the following issues:

- (aa) a detailed description of the environment that may be affected by the filming activity, and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected or impacted on by the filming activity;
 - (bb) proposed management or mitigation measures that will be implemented to minimise environmental impacts and respond to any negative impact which may occur during the filming activity;
 - (cc) measures to be taken to rehabilitate the affected environment if required; and
 - (dd) a description of any consultation process with interested and affected parties that was undertaken and a summary of any comments that were received during such consultation process.
 - (iii) the applicant provides a detailed description of the proposed advertisement, production or filming activity and the purpose of the proposed vehicle use; and
 - (iv) the proposed vehicle use does not depict or promote the illegal use of a vehicle in the coastal area in South Africa or may not be recognisable as an area in South Africa.
 - (b) Such a permit may be issued for the duration of the production up to a maximum of one year.
- (8) (a) A permit may be issued for physically disabled person in terms of sub-regulation 4(1)(f) if-
- (i) the applicant pays the application fee if prescribed; and
 - (ii) the applicant provides written confirmation from the National Council for Persons with Physical Disabilities in South Africa that he or she is a physically disabled person;
- (b) Such a permit may be issued for a maximum period of five years.
- (9) (a) A permit may be issued for a fishing competitions in terms of sub-regulation 4(1)(g) if-
- (i) the applicant pays the application fee if prescribed;
 - (ii) the applicant submits a code of conduct or similar document issued by the organisers of the fishing competition that regulates the use of vehicles by participants; and
 - (iii) the applicant provides an environmental plan for the proposed vehicle use in the coastal area which plan must, as a minimum, address the following issues:
 - (aa) a detailed description of the environment that may be affected by the fishing competition, and the manner in which the physical, biological, social, economic and cultural aspects of the environment may be affected or impacted on;

- (bb) proposed management or mitigation measures that will be implemented to minimise environmental impacts and respond to any negative impact which may occur during the fishing competition;
 - (cc) measures to be taken to rehabilitate the affected environment if required; and
 - (dd) a description of any consultation process with interested and affected parties that was undertaken and a summary of any comments that were received during such consultation process.
 - (b) Such a permit may be issued for the duration of the competition, provided that a permit shall only be issued for a single specified organised recreational fishing competition.
- (10)
- (a) A permit may be issued for construction or maintenance in terms of sub-regulation 4(1)(h) if-
 - (i) the applicant pays the application fee if prescribed;
 - (ii) the applicant provides a copy of an environmental authorisation if required;
 - (iii) an environmental authorisation is not required, a letter from the competent authority confirming this;
 - (iv) the applicant provides an environmental management plan if required in the environmental authorisation; and
 - (v) a detailed description of the construction or maintenance activity and the extent of the use of a vehicle including the time periods and number of vehicles which may be used.
 - (b) Such a permit may be issued for a maximum period of five years.
- (11)
- For any application for a permit the Chief Director must be satisfied that-
- (a) the intended vehicle use will not cause significant harm to the coastal area; and
 - (b) members of the public will be able to continue to safely use and enjoy that part of the coastal area.
- (12) When considering an application for a permit to use a vehicle in the coastal area under the jurisdiction of a management authority of a coastal protected area, the Chief Director shall only issue a decision on the application after consulting with the management authority of the coastal protected area.
- (13) The Chief Director may, on application subject to a renewal fee, renew a permit for a further period of not more than two years, whereafter a new application must be made in terms of regulation 4.
- (14) Any permit issued in terms of these regulations is not transferable.

5. Assessment of impact of use of vehicles in coastal area

Notwithstanding anything to the contrary in these regulations, the Chief Director may require an applicant to fulfill the requirements of Chapter 5 of the National Environmental Management Act in relation to the investigation, assessment or communication of the potential impacts of the activity concerned.

6. Consideration of application

- (1) The relevant authority referred to in regulation 4 and 16 must refuse to consider an incomplete application for a permit or exemption.
- (2) The relevant authority may, after considering an application submitted in terms of these regulations—
 - (a) request the applicant to carry out further investigations and/or submit additional information within a specified time frame, failing which the application will be regarded as incomplete;
 - (b) request the applicant to consult with specific organisations, authorities, persons or interested parties and submit the results of the required consultations;
 - (c) refuse the application; or
 - (d) issue a permit or exemption.
- (3) A permit or exemption may be issued subject to conditions.

7. Decision

- (1) A permit or exemption must include—
 - (a) the geographic location and precise description of the area for which the permit or exemption is being issued;
 - (b) the name, address and telephone number of the applicant;
 - (c) the conditions included in the permit or exemption; and
 - (d) the date of expiry or the duration of the permit or exemption.
- (2) A decision to refuse a permit or exemption must include:
 - (a) the reasons for the decision; and
 - (b) the date of the decision.

8. Suspension, amendment and cancellation of permits and exemptions

- (1) Subject to sub-regulation (2), a permit or exemption issued under these regulations may at any time be suspended, cancelled or amended.
- (2) A permit or exemption may be suspended, cancelled or amended, if-
 - (a) the relevant authority is satisfied on the basis of information that was not considered when the permit or exemption was issued, that it is necessary or desirable to suspend, cancel or amend the permit or exemption to prevent deterioration or further deterioration of the environment within the coastal area;
 - (b) other similar permits or exemptions held by other persons in the same vicinity have also been reviewed and the suspension, cancellation or amendment does not unfairly discriminate against the holder in relation to other holders of similar permits or exemptions in the same vicinity;
 - (c) the permit holder or exemption holder is in breach of a condition contained in the permit or exemption;
 - (d) the permit holder or exemption holder provided incorrect or false information in the application for the permit or exemption; or
 - (e) the holder of a permit or exemption has been convicted of an offence in terms of the Act, the National Environmental Management Act or a specific environmental management act or any regulations issued thereunder.
- (3) A permit or exemption may be amended-
 - (a) if an error needs to be corrected or rectified;
 - (b) at the request of the applicant;
 - (c) for the proper management and implementation of these Regulations; or
 - (d) where the conditions or circumstances have changed since the original permit or exemption was issued.

9. Vehicle use at public launch sites

No person shall use a vehicle to launch a vessel from a public launch site-

- (a) which is not listed in terms of the public launch site regulations; and
- (b) which site is not a vehicle use launch site.

10. Law enforcement

- (1) Any authorised officer may in addition to any powers he or she may have in terms of the National Environmental Management Act or the Criminal Procedure Act-
 - (a) arrest any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations;

- (b) seize any vehicle if he or she on reasonable grounds believes that the vehicle –
 - (i) has been or is being used in the commission of an offence in terms of these regulations;
 - (ii) may afford evidence of the commission or suspected commission of an offence in terms of these regulations; or
 - (iii) is intended to be used in the commission of an offence in terms of these regulations;
 - (c) at any time within 30 days of the alleged commission of the offence, issue a written notice in terms of the Criminal Procedure Act, stipulating an admission of guilt fine which shall not exceed R2500, 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 written notice in terms of sub-regulation 10(1)(c) may in terms of the Criminal Procedure Act, pay an admission of guilt fine as stipulated in a written notice.

11. Co-operation with authorised officers

- (1) The driver or passenger of any vehicle in the coastal area must comply immediately with any lawful instruction given or request made by an authorised officer.
- (2) Any person who has been granted a permit or exemption to use a vehicle in the coastal area under these regulations, must immediately produce such permit or exemption if requested to do so by an authorised officer.
- (3) No person shall—
 - (a) assault, obstruct, resist, delay, threaten, intimidate, abuse or otherwise interfere with an authorised officer in the performance of his or her duties, or any other person lawfully assisting and acting under the instructions of an authorised officer;
 - (b) incite or encourage any other person to assault, resist, obstruct, threaten, intimidate, abuse or otherwise interfere with any authorised officer while exercising or performing his or her powers or duties, or any other person lawfully assisting and acting under the instructions of an authorised officer;
 - (c) fail to comply with the lawful requirements of any authorised officer; or
 - (d) give any false or misleading particulars to an authorised officer.

12. Procedure with regard to seized vehicles

- (1) Any vehicle seized under these regulations must -
 - (a) be immediately delivered to a police official if the authorised officer is not a police official as defined in section 1 of the Criminal Procedure Act; and
 - (b) be dealt with in accordance with the provisions of the Criminal Procedure Act, except as otherwise provided in these regulations.

- (2) If any vehicle has been seized in terms of regulation 10 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 seizure, the Director-General may apply to the court for it to be forfeited to the State and the court shall make any order it considers appropriate.
- (3) If the lawful owner of a seized vehicle fails to take delivery of the vehicle within 90 days of being notified by registered post at his or her last-known address that he or she may take possession of the vehicle, the vehicle shall be forfeited to the State and disposed of as the Director-General in his or her discretion considers appropriate.
- (4) 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 written notice or convicted of an offence in terms of these regulations and a fine is imposed, the vehicle may be detained until all fines, orders for costs and penalties imposed in terms of these regulations have been paid.
- (5) If any payment contemplated in sub-regulation (4) is not made within such time as the court may determine, the court may order the vehicle to be forfeited to the State.

13. Offences and penalties

Any person who contravenes any provision of these regulations shall be guilty of an offence and liable on conviction to a fine up to a maximum of R500 000 per vehicle per offence, or to imprisonment not exceeding two years, or to both such fine and such imprisonment.

14. Presumptions

- (1) If in the course of any proceedings in connection with an offence under these regulations it is proved that—
 - (a) a person was sitting behind the wheel or at the controls of a vehicle, whether or not the vehicle was stationary, it shall be prima facie proof that the person was using that vehicle in that place.
 - (b) a person used a vehicle in the coastal area other than on a public road, it shall be prima facie proof that the vehicle was used in a manner that was not permissible under regulation 3; was not authorised in terms of a permit granted under regulation 4 or an exemption under regulation 16, and was not lawful in terms of regulation 18

15. Forfeiture

- (1) A court convicting any person of an offence under these regulations may 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 considers appropriate.

16. Exemptions

- (1) Any person, including an organ of state, may apply in writing to the Minister for an exemption from obtaining a permit or from complying with any of the requirements in regulation 4 for the granting of a permit.
- (2) The Minister shall only issue an exemption if satisfied that granting such exemption will not result in significant harm to the coastal area, will not seriously affect any rights of the general public to enjoy the coastal area, and is in the public interest, alternatively in the interests of protecting the environment.

17. Conflict and Repeal

- (1) These regulations will prevail if there is any conflict between any of the provisions in them and any other regulations, by-laws or other subordinate legislation relating to the use of vehicles in the coastal area made under any Act.
- (2) Except for regulation 7 thereof, the Regulations for the Control of Use of Vehicles in the Coastal Zone, published in terms of the National Environmental Management Act and promulgated under Government Notice No. 1399 in Government Gazette 22960 of 21 December 2001 and Government Notice No. 1426 in Government Gazette 27086 of 7 December 2004 are hereby repealed.

18. Transitional provisions

- (1) Any permit or exemption issued under regulations repealed by these Regulations shall remain valid until revocation, cancellation or expiry of such permit or exemption.
- (2) Any boat launch site licence issued under regulations repealed by these Regulations shall remain valid and shall be deemed to be a vehicle use launch site for the purposes of regulation 3(1)(b), until a list of public launch sites has been published in terms of the public launch site regulations.

19. Short title and Commencement

These regulations are called the Control of Use of Vehicles in the Coastal Area Regulations and shall commence on the date of publication in the *Government Gazette*.