

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT BILL

*(As amended by the Select Committee on Land and Environmental Affairs)
(National Council of Provinces)
(The English text is the official text of the Bill)*

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

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BILL

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

PREAMBLE

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

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

AND WHEREAS the coastal zone is a unique part of the environment in which biophysical, economic, social and institutional considerations interconnect in a manner that requires a dedicated and integrated management approach;

AND WHEREAS much of the rich natural heritage of our coastal zone is being squandered by overuse, degradation and inappropriate management;

AND WHEREAS the economic, social and environmental benefits of the coastal zone have been distributed unfairly in the past;

AND WHEREAS the conservation and sustainable use of the coastal zone requires the establishment of an innovative legal and institutional framework that clearly defines the status of coastal land and waters and the respective roles of the public, the State and other users of the coastal zone and that facilitates a new co-operative and participatory approach to managing the coast;

AND WHEREAS integrated coastal management should be an evolving process that learns from past experiences, that takes account of the functioning of the coastal zone as a whole and that seeks to co-ordinate and regulate the various human activities that take place in the coastal zone in order to achieve its conservation and sustainable use,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,
as follows:—

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1. (1) In this Act, unless the context indicates otherwise—
- “**admiralty reserve**” means any strip of land adjoining the inland side of the high-water mark which, when this Act took effect, was state land reserved or designated on an official plan, deed of grant, title deed or other document evidencing title or land-use rights as “admiralty reserve”, “government reserve”, “beach reserve”, “coastal forest reserve” or other similar reserve; 15
- “**adverse effect**” means any actual or potential impact on the environment that impairs, or may impair, the environment or any aspect of it to an extent that is more than trivial or insignificant and, without limiting the term, includes any actual or potential impact on the environment that results in— 20
- (a) a detrimental effect on the health or well-being of a person;
- (b) an impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or 25
- (c) a detrimental effect on the environment due to a significant impact or cumulative effect of that impact taken together with other impacts;
- “**aircraft**” means an aircraft as defined in terms of section 1 of the National Environmental Management Act;
- “**authorisation**” means an authorisation under this Act, and includes a coastal waters discharge permit, a general authorisation, a dumping permit, a coastal lease, a coastal concession and any authorisation that is regarded as being an authorisation under this Act, but excludes an environmental authorisation; 30
- “**Biodiversity Act**” means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); 35
- “**biodiversity**” or “**biological diversity**” has the same meaning ascribed to it in the Biodiversity Act;
- “**coastal access land**” means land designated as coastal access land in terms of section 18(1), read with section 26;
- “**coastal activities**” means coastal activities listed or specified in terms of Chapter 5 of the National Environmental Management Act which take place in the coastal zone; 40
- “**coastal concession**” means a concession awarded in terms of section 65 read with section 95;
- “**coastal environment**” means the environment within the coastal zone; 45
- “**coastal lease**” means a lease awarded in terms of section 65 read with section 95;
- “**coastal management**” includes—
- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;
- (b) the regulation and management of the use and development of the coastal zone and coastal resources; 50
- (c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and

(d) planning in connection with the activities referred to in paragraphs (a), (b) and (c);

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

“coastal management programme” means the national or a provincial or municipal coastal management programme established in terms of Chapter 6;

“coastal planning scheme” means a scheme that—

(a) reserves defined areas within the coastal zone to be used exclusively or mainly for specified purposes; and

(b) prohibits or restricts any use of these areas in conflict with the terms of the scheme;

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

“coastal protection zone” means the coastal protection zone contemplated in section 17;

“coastal public property” means coastal public property referred to in section 7;

“coastal resources” means any part of—

(a) the cultural heritage of the Republic within the coastal zone, including shell middens and traditional fish traps; or

(b) the coastal environment that is of actual or potential benefit to humans;

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

“coastal waters” means—

(a) marine waters that form part of the internal waters or territorial waters of the Republic referred to in sections 3 and 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), respectively; and

(b) subject to section 26, any estuary;

“coastal wetland” means—

(a) any wetland in the coastal zone; and

(b) includes—

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

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

“competent authority” means a competent authority identified in terms of section 24C of the National Environmental Management Act;

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

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

“development”, in relation to a place, means any process initiated by a person to change the use, physical nature or appearance of that place, and includes—

(a) the construction, erection, alteration, demolition or removal of a structure or building;

(b) a process to rezone, subdivide or consolidate land;

(c) changes to the existing or natural topography of the coastal zone; and

(d) the destruction or removal of indigenous or protected vegetation;

“Director-General” means the Director-General of the Department;

“dumping at sea” means—

(a) any deliberate disposal into the sea of any waste or material other than operational waste from a vessel, aircraft, platform or other man-made structure at sea;

- (b) any deliberate disposal into the sea of a vessel, aircraft, platform or other man-made structure at sea;
 - (c) any storage of any waste or other material on or in the seabed, its subsoil or substrata; or
 - (d) any abandonment or toppling at site of a platform or other structure at sea, for the sole purpose of deliberate disposal, but “dumping at sea” does not include—
 - (i) the lawful disposal at sea through sea out-fall pipelines of any waste or other material generated on land;
 - (ii) the lawful depositing of any substance or placing or abandoning of anything in the sea for a purpose other than mere disposal of it; or
 - (iii) disposing of or storing in the sea any tailings or other material from the bed or subsoil of coastal waters generated by the lawful exploration, exploitation and associated off-shore processing of mineral resources from the bed, subsoil or substrata of the sea;
- “**dumping permit**” means a permit granted under section 71;
- “**dynamic coastal processes**” means all natural processes continually reshaping the shoreline and near shore seabed and includes—
- (a) wind action;
 - (b) wave action;
 - (c) currents;
 - (d) tidal action; and
 - (e) river flows;
- “**effluent**” means—
- (a) any liquid discharged into the coastal environment as waste, and includes any substance dissolved or suspended in the liquid; or
 - (b) liquid which is a different temperature from the body of water into which it is being discharged;
- “**environment**” means “environment” as defined in the National Environmental Management Act;
- “**environmental authorisation**” means an authorisation granted in respect of coastal activities by a competent authority in terms of Chapter 5 of the National Environmental Management Act;
- “**estuary**” means a body of surface water—
- (a) that is part of a water course that is permanently or periodically open to the sea;
 - (b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the sea; or
 - (c) in respect of which the salinity is measurably higher as a result of the influence of the sea;
- “**exclusive economic zone**” means the exclusive economic zone of the Republic referred to in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);
- “**Gazette**”, when used in relation to—
- (a) the Minister, means the *Government Gazette*;
 - (b) the MEC, means the *Provincial Gazette*; and
 - (c) a municipality, means the *Provincial Gazette* of the province in which the municipality is situated;
- “**general authorisation**” means an authorisation under section 69(2);
- “**high-water mark**” means the highest line reached by coastal waters, but excluding any line reached as a result of—
- (a) exceptional or abnormal floods or storms that occur no more than once in ten years; or
 - (b) an estuary being closed to the sea;
- “**incinerate at sea**” means the deliberate combustion of any material on board a vessel, platform or other man-made structure at sea for the purpose of disposing of it by thermal destruction, but does not include the combustion of operational waste from a vessel, aircraft, platform or other man-made structure at sea;
- “**interests of the whole community**” means the collective interests of the community determined by—

- (a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;
 - (b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and 5
 - (c) taking into account the interests of other living organisms that are dependent on the coastal environment;
- “issuing authority”** means the authority designated in terms of this Act to issue authorisations; 10
- “land development plan”** means any plan that is prepared or approved in terms of legislation regulating land development and that indicates the desirable uses for areas of land but does not create legal rights to use land;
- “Land Survey Act”** means the Land Survey Act, 1997 (Act No. 8 of 1997); 15
- “land use scheme”**, in relation to an area, means a scheme established by or under legislation and that creates or regulates the use of land in that area, and includes a land use scheme, a town planning scheme, a zoning scheme and any other similar instrument that identifies or regulates rights to use land;
- “littoral active zone”** means any land forming part of, or adjacent to, the seashore that is— 20
- (a) unstable and dynamic as a result of natural processes; and
 - (b) characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated; 25
- “local community”** means any community of people living, or having rights or interests, in a distinct geographical area within the coastal zone;
- “low-water mark”** means the lowest line to which coastal waters recede during spring tides;
- “Marine Living Resources Act”** means the Marine Living Resources Act, 1998 (Act No. 18 of 1998); 30
- “MEC”** means the member of the Executive Council of a coastal province who is responsible for the designated provincial lead agency in terms of this Act;
- “Minister”** means the Minister of Environmental Affairs and Tourism;
- “municipality”**— 35
- (a) means a metropolitan, district or local municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); or
 - (b) in relation to the implementation of a provision of this Act in an area which falls within both a local municipality and a district municipality, means— 40
 - (i) the district municipality; or
 - (ii) the local municipality, if the district municipality, by agreement with the local municipality, has assigned the implementation of that provision in that area to the local municipality;
- “Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 45
- “National Environmental Management Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- “national estuarine management protocol”** means the national protocol concerning the management of estuaries contemplated in section 33;
- “National Water Act”** means the National Water Act, 1998 (Act No. 36 of 1998); 50
- “operational waste”**—
- (a) means any waste or other material that is incidental to, or derived from, the normal operation of a vessel, aircraft, platform or other man-made structure and its equipment; and
 - (b) excludes any waste or other material that is transported by or to a vessel, aircraft, platform or other man-made structure which is operated for the purpose of disposing of that waste or other material, including any substances derived from treating it on board, at sea; 55
- “organ of state”** has the meaning assigned to it in section 239 of the Constitution;
- “pollution”** has the meaning assigned to it in section 1 of the National Environmental Management Act; 60
- “prescribe”** means prescribe by regulation;

“protected area” means a protected area referred to in section 9 of the Protected Areas Act;

“Protected Areas Act” means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

“provincial lead agency” means a provincial organ of state designated by the Premier of the province in terms of section 38 as the lead agency for coastal management in the province; 5

“sea” means all marine waters, including—

- (a) the high seas;
- (b) all marine waters under the jurisdiction of any state; and 10
- (c) the bed, subsoil and substrata beneath those waters, but does not include estuaries;

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

“South African aircraft” means any aircraft registered in the Republic in terms of applicable legislation; 15

“South African vessel” means any vessel registered or deemed to be registered in the Republic in terms of applicable legislation;

“special management area” means an area declared as such in terms of section 23; 20

“this Act” includes any regulation made in terms of this Act;

“traditional council” means a traditional council established and recognised in terms of section 3 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

“vessel” means a waterborne craft of any kind, whether self-propelled or not, but does not include any moored floating structure that is not used as a means of transport by water; 25

“waste” means any substance, whether or not that substance can be re-used, recycled or recovered—

- (i) that is surplus, unwanted, rejected, discarded, abandoned or disposed of; 30
- (ii) that the generator has no further use of, for the purposes of production, reprocessing or consumption; and
- (iii) that is discharged or deposited in a manner that may detrimentally impact on the environment;

“Waste Assessment Guidelines” means the guidelines set out in Schedule 2; and 35

“wetland” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates otherwise. 40

Objects of Act

2. The objects of this Act are—

- (a) to determine the coastal zone of the Republic;
- (b) to provide, within the framework of the National Environmental Management Act, for the co-ordinated and integrated management of the coastal zone by all spheres of government in accordance with the principles of co-operative governance; 45
- (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; 50
- (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 regarding coastal management and the marine environment. 55

State’s duty to fulfil environmental rights in coastal environment

3. In fulfilling the rights contained in section 24 of the Constitution of the Republic of South Africa, the State—

- (a) through its functionaries and institutions implementing this Act, must act as the trustee of the coastal zone; and
- (b) must, in implementing this Act, take reasonable measures to achieve the progressive realisation of those rights in the interests of every person.

Application of Act 5

- 4.** (1) This Act applies to the Republic, including—
- (a) its internal waters, territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
 - (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).
- 10

(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.

Application of National Environmental Management Act

5. (1) This Act must, in relation to coastal management, be read, interpreted and applied in conjunction with the National Environmental Management Act. 15

(2) This Act must be regarded as a “specific environmental management Act” as defined in section 1 of the National Environmental Management Act.

(3) Chapter 4 of the National Environmental Management Act applies to the resolution of conflicts arising from the implementation of this Act.

Conflicts with other legislation 20

6. (1) If there is a conflict relating to coastal management between a section of this Act and any other legislation existing when this Act takes effect, the section of this Act prevails.

(2) A provision contained in this Act or the National Environmental Management Act, or in regulations made or authorisations issued under either Act, prevails if there is a conflict between that provision and a provision contained in regulations or in an authorisation that has been saved in terms of section 99. 25

(3) Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament— 30

- (a) by the Minister only; or
- (b) only after the Minister has been consulted on the contents of the draft legislation.

CHAPTER 2

COASTAL ZONE 35

Part 1

Coastal public property

Composition of coastal public property

- 7.** Coastal public property consists of— 40
- (a) coastal waters;
 - (b) land submerged by coastal waters, including—
 - (i) land flooded by coastal waters which subsequently becomes part of the bed of coastal waters; and
 - (ii) the substrata beneath such land;
 - (c) any island, whether natural or artificial, within coastal waters, but excluding— 45
 - (i) any part of an island that was lawfully alienated before this Act commenced; or
 - (ii) any part of an artificially created island (other than the seashore of that island) that is proclaimed by the Minister to be excluded from coastal public property; 50

- (d) the seashore, but excluding—
 - (i) any portion of the seashore below the high-water mark which was lawfully alienated before the Sea-Shore Act, 1935 (Act No. 21 of 1935), took effect or which was lawfully alienated in terms of that Act and which has not subsequently been re-incorporated into the seashore; and 5
 - (ii) any portion of a coastal cliff that was lawfully alienated before this Act took effect and is not owned by the State;
- (e) the seashore of a privately owned island within coastal waters;
- (f) any admiralty reserve owned by the State;
- (g) any state-owned land declared under section 8 to be coastal public property; or 10
- (h) any natural resources on or in—
 - (i) any coastal public property of a category mentioned in paragraph (a) to (g);
 - (ii) the exclusive economic zone, or in or on the continental shelf as contemplated in sections 7 and 8 of the Maritime Zones Act, 1994 (Act 15 No. 15 of 1994), respectively; or
 - (iii) any harbour, work or other installation on or in any coastal public property of a category mentioned in paragraphs (a) to (h) that is owned by an organ of state.

Extending coastal public property 20

8. (1) The Minister may, by notice in the *Gazette*, declare in the manner contemplated in subsection (2) 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; 25
 - (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 in terms of subsection (1), the Minister must— 30
- (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) The declaration of state-owned land as coastal public property in terms of subsection (1) may only be withdrawn by the Minister by notice in the *Gazette* with the 35 prior approval of Parliament.
- (4) This section does not affect the application of section 26.

Acquisition of private land by State

9. (1) The Minister, acting with the concurrence of the Minister of Land Affairs, may acquire private land for the purpose of declaring that land as coastal public property, 40 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, 1975 (Act No. 63 of 1975). 45
- (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, by notice in the *Gazette*—
- (a) designate state-owned land vested in the national government for the purpose 50 of facilitating any of the matters mentioned in section 8(1); or
 - (b) at any time withdraw a designation in terms of paragraph (a) by following the process described in subsection (2).
- (2) Before designating state-owned land in terms of subsection (1)(a) or withdrawing a designation in terms of subsection (1)(b) the Minister must— 55
- (a) consult the MEC of the province concerned;

- (b) consult the persons responsible for managing the state-owned land and interested and affected parties in terms of Part 5 of Chapter 6; and
- (c) obtain the concurrence of the Minister responsible for managing that state-owned land.
- (3) The MEC may, by notice in the *Gazette*— 5
 - (a) designate state-owned land vested in the provincial government for the purpose of facilitating any of the matters mentioned in section 8(1); or
 - (b) at any time withdraw a designation in terms of paragraph (a) in the manner contemplated in subsection (4).
- (4) Before designating state-owned land in terms of subsection (3)(a) or withdrawing a designation in terms of subsection (3)(b) the MEC must— 10
 - (a) consult the Minister;
 - (b) consult the persons responsible for managing the state-owned land and interested and affected parties in terms of Part 5 of Chapter 6; and
 - (c) obtain the concurrence of the MEC responsible for managing that state-owned land. 15
- (5) State-owned land designated in terms of subsection (1)(a) or (3)(a) must be regarded as coastal public property.

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. 20
- (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 25

- 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. 30

Access to coastal public property

- 13. (1) Subject to this Act and any other applicable legislation, any natural person in the Republic—
 - (a) has a right of reasonable access to coastal public property; and 35
 - (b) is entitled to use and enjoy coastal public property, provided such use—
 - (i) does not adversely affect the rights of members of the public to use and enjoy the coastal public property;
 - (ii) does not hinder the State in the performance of its duty to protect the environment; and 40
 - (iii) does not cause an adverse effect.
- (2) This section does not prevent prohibitions or restrictions on access to, or the use of, any part of coastal public property—
 - (a) which is or forms part of a protected area;
 - (b) to protect the environment, including biodiversity; 45
 - (c) in the interests of the whole community;
 - (d) in the interests of national security; or
 - (e) in the national interest.
- (3) No fee may be charged for access to coastal public property without the approval of the Minister. 50
- (4) The Minister, before granting approval for the imposition of a fee, must require a public participation process in accordance with Part 5 of Chapter 6 to enable interested and affected parties to make representations.
- (5) Subsections (3) and (4) do not apply to coastal public property—
 - (a) that has been leased; or 55
 - (b) that is, or forms part of, a protected area or the sea that forms part of a harbour or a proclaimed fishing harbour.

Position of high-water mark

14. (1) If land has a curvilinear boundary extending to, or a stated distance from, the high-water mark that curvilinear boundary may be substituted by a boundary of another character by following the procedure prescribed by section 34 of the Land Survey Act, provided that in addition to the requirements of that section the written agreement referred to in that section must be signed by— 5

- (a) the Minister; and
- (b) the holder of real rights in the land or in land contiguous to it whose rights would be adversely affected by the replacement of the curvilinear boundary.

(2) If a written agreement is not concluded in accordance with subsection (1) and section 34 as read with section 29 of the Land Survey Act, subsections (3) to (5) of section 29 of that Act apply with the necessary changes. 10

(3) Once a boundary line has been established in terms of subsection (1) it shall be regarded as the high-water mark as defined in this Act unless a new boundary is established in terms of subsection (4). 15

(4) If the high-water mark moves inland of the natural curvilinear boundary or the boundary line established in terms of subsection (1) and remains there for at least two years, a new boundary line on, or inland of, the high-water mark as determined by natural indications, may be determined in accordance with this section at the initiative of the Surveyor-General or by a written agreement referred to in subsection (1) being lodged with the Surveyor-General by— 20

- (a) the Minister;
- (b) the municipality within whose area of jurisdiction the boundary line is situated;
- (c) the owner of a land unit affected by the movement of the high-water mark; or 25
- (d) the holder of real rights in a land unit affected by the movement of the high-water mark.

(5) If the high-water mark moves inland of the boundary line of a land unit due to the erosion of the coast, sea-level rise or other causes, and remains inland of that boundary line for a period of three years, the owner of that land unit— 30

- (a) loses ownership of any portion of that land unit that is situated below the high-water mark; and
- (b) is not entitled to compensation from the State for that loss of ownership, unless the movement of the high-water mark was caused by an intentional or negligent act or omission by an organ of state and was a reasonably foreseeable consequence of that act or omission. 35

(6) If accretion occurs, whether as a result of natural processes or human activities, land which formed part of the seashore when this Act took effect and which subsequently becomes situated inland of the high-water mark as a result of a change in the position of the high-water mark, remains coastal public property, and does not become part of any adjoining property unless the property is bounded by the high-water mark or extends to a stated distance from the high-water mark. 40

Measures affecting erosion and accretion

15. (1) No person, owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion or accretion may require any organ of state or any other person to take measures to prevent the erosion or accretion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is caused by an intentional act or omission of that organ of state or other person. 45

(2) No person may construct, maintain or extend 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. 50

Part 2

Coastal protection zone

Composition of coastal protection zone

- 16.** (1) Subject to subsection (2), the coastal protection zone consists of—
- (a) land falling within an area declared in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), as a sensitive coastal area within which activities identified in terms of section 21(1) of that Act may not be undertaken without an authorisation; 5
 - (b) any part of the littoral active zone that is not coastal public property;
 - (c) any coastal protection area, or part of such area, which is not coastal public property; 10
 - (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; 15
 - (e) any land unit not referred to in paragraph (d) that is situated wholly or partially within 100 metres of the high-water mark;
 - (f) any coastal wetland, lake, lagoon or dam which is situated wholly or partially within a land unit referred to in paragraph (d)(i) or (e); 20
 - (g) any part of the seashore which is not coastal public property, including all privately owned land below the high-water mark;
 - (h) any admiralty reserve which is not coastal public property; or
 - (i) any land that would be inundated by a 1:50 year flood or storm event.
- (2) An area forming part of the coastal protection zone, except an area referred to in subsection (1)(g) or (h), may be excised from the coastal protection zone in terms of section 26. 25

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— 30
- (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; 35
 - (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— 40
 - (i) performing rescue operations; or
 - (ii) temporarily depositing objects and materials washed up by the sea or tidal waters.

Part 3

45

Coastal access land

Designation of coastal access land

- 18.** (1) Each municipality whose area includes coastal public property must within four years of the commencement of this Act, make a by-law that designates strips of land as coastal access land in order to secure public access to that coastal public property. 50
- (2) Coastal access land is subject to a public access servitude in favour of the local municipality within whose area of jurisdiction it is situated and in terms of which members of the public may use that land to gain access to coastal public property.
- (3) A municipality must implement subsection (1) subject to—

- (a) the other provisions of this Act, including—
 - (i) any prohibitions or restrictions referred to in section 13(2); and
 - (ii) the national and applicable provincial coastal management programmes; and
 - (b) any other applicable national or provincial legislation. 5
- (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) Subject to section 19, a municipality may, on its own initiative or in response to a request from an organ of state or any other interested and affected party, withdraw the designation of any land as coastal access land. 10

Process for designating and withdrawing designation of coastal access land

- 19.** Before designating land as coastal access land or withdrawing any such designation, a municipality must—
- (a) assess the potential environmental impacts of doing so;
 - (b) consult with interested and affected parties in accordance with Part 5 of Chapter 6; and 15
 - (c) give notice of the intended designation or withdrawal of the designation to the owner of the land.

Responsibilities of municipalities with regard to coastal access land

- 20.** (1) A municipality in whose area coastal access land falls, must— 20
- (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; 25
 - (e) where appropriate and within its available resources, provide facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of physically disabled persons; 30
 - (f) ensure that the provision and use of coastal access land and associated infrastructure do not cause adverse effects to the environment;
 - (g) remove any public access servitude that is causing or contributing to adverse effects that the municipality is unable to prevent or to mitigate adequately;
 - (h) describe or otherwise indicate all coastal access land in any municipal coastal management programme and in any municipal spatial development framework prepared in terms of the Municipal Systems Act; 35
 - (i) perform any other actions that may be prescribed; and
 - (j) report to the MEC within two years of this Act coming into force on the measures taken to implement this section. 40
- (2) A municipality may make by-laws for the proper implementation of subsection (1).

Part 4

Coastal waters

Control and management of coastal waters 45

- 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) Subject to section 87, the MEC may by notice in the *Gazette* declare that with effect from a specified date the whole or any part of a protected area that is not coastal public property, will not form part of the coastal protection zone. 5

(2) The MEC may only publish a notice referred to in subsection (1) after consultation with the management authority of the protected area, if he or she on reasonable grounds believes that doing so will not prejudice the effective management of the coastal zone.

Part 6

10

Special management areas

Declaration of special management areas

23. (1) The Minister may, after consultation with the MEC, by notice in the *Gazette*—

(a) declare an area that is wholly or partially within the coastal zone to be a special management area; or 15

(b) withdraw or amend any declaration made in terms of paragraph (a).

(2) Before declaring an area to be a special management area, the Minister must give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6.

(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— 20

(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 25

(d) conserve, protect or enhance coastal ecosystems and biodiversity in the area.

(4) The Minister may prescribe specified activities which are prohibited in special management areas taking into account the purpose for which the special management area was declared.

Management of special management areas

30

24. (1) The Minister may, by notice in the *Gazette*, appoint a manager for each special management area.

(2) The manager must have sufficient expertise and capacity to manage the special management area in a manner that will achieve the objectives for which it was established and may be— 35

(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) Before authorising the manager to begin managing the special management area, the Minister must make regulations that— 40

(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

45

Coastal set-back lines

Establishment of coastal set-back lines

25. (1) An MEC must in regulations published in the *Gazette*—

(a) establish or change coastal set-back lines—

- (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. 5
- (2) Before making or amending the regulations referred to in subsection (1), the MEC must—
- (a) consult with any local municipality within whose area of jurisdiction the coastal set-back line is, or will be, situated; and 10
 - (b) give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6.
- (3) A local municipality within whose area of jurisdiction a coastal set-back line has been established must delineate the coastal set-back line on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the set-back line in relation to existing cadastral boundaries. 15
- (4) A coastal set-back line may be situated wholly or partially outside the coastal zone.

CHAPTER 3

BOUNDARIES OF COASTAL AREAS

Determination and adjustment of coastal boundaries 20

- 26.** (1) The coastal boundaries of—
- (a) coastal public property may be determined or adjusted by the Minister in accordance with section 27 by notice in the *Gazette*;
 - (b) the coastal protection zone may be determined or adjusted by the MEC in accordance with section 28 by notice in the *Gazette*; 25
 - (c) a special management area may be determined or adjusted by the Minister in accordance with section 23 by notice in the *Gazette*; and
 - (d) coastal access land may be determined or adjusted by the municipality in accordance with section 29 by notice in the *Gazette*.
- (2) The power of the Minister to determine or adjust the inland coastal boundary of coastal public property in terms of section 27, includes the power to make any consequential change to an adjoining coastal boundary of the coastal protection zone or coastal access land.
- (3) The coastal boundaries referred to in subsection (1) may be determined or adjusted if— 35
- (a) that coastal boundary—
 - (i) is uncertain or undefined;
 - (ii) is subject to disputing claims; or
 - (iii) has shifted due to natural or artificial processes; or
 - (b) the Minister, MEC or municipality concerned on reasonable grounds believes that the objects of this Act will be achieved more effectively by doing so. 40
- (4) When determining or adjusting a coastal boundary in terms of subsection (1), the Minister, MEC or municipality in question must—
- (a) give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6; 45
 - (b) take into account—
 - (i) any representations made by interested and affected parties;
 - (ii) the interests of any affected local community;
 - (iii) any applicable coastal management programme; and
 - (c) comply with any other requirements that may be prescribed. 50
- (5) If the Minister or MEC determines or adjusts any coastal boundary under this section, he or she must immediately inform any municipality within whose area of jurisdiction the coastal boundary is situated to enable the municipality to reflect that coastal boundary on its zoning maps in accordance with section 31.

Determining and adjusting coastal boundary of coastal public property

- 27.** (1) When determining or adjusting the inland coastal boundary of coastal public property, the Minister must take into account—
- (a) the dynamic nature of the shoreline;
 - (b) the need to make appropriate allowance for—
 - (i) the periodic natural movements in the high-water mark; and
 - (ii) the erosion and accretion of the seashore;
 - (c) the importance of ensuring the natural functioning of dynamic coastal processes and of extending the coastal boundaries of coastal public property to include the littoral active zone and sensitive coastal ecosystems, including coastal wetlands;
 - (d) the potential effects of projected rises in sea-level; and
 - (e) any other factor that may be prescribed.
- (2) The Minister may exclude any area from coastal public property for government purposes, by proclamation.
- (3) Before excluding any area from coastal public property in terms of subsection (2), the Minister must consult with interested and affected parties in terms of Part 5 of Chapter 6.
- (4) The Minister may exclude any area from coastal public property for any other purpose with the ratification of Parliament.
- (5) Land excluded from coastal public property forms part of state owned land.
- (6) The Minister may on application approve the reclamation of land. Such reclaimed land shall, unless excluded from coastal public property in terms of subsection (5), form part of coastal public property.
- (7) For purposes of this section, “government purposes” means the exercise of functions by an organ of state that are in the national interest or in the interest of national security but does not include donation, leases of more than 20 years or alienation by that organ of state.

Determining and adjusting coastal boundaries of coastal protection zone

- 28.** (1) The MEC may not determine or adjust the coastal boundaries of the coastal protection zone in a manner that changes the coastal boundaries of coastal public property.
- (2) The MEC may include land that is not adjacent to coastal public property in the coastal protection zone.
- (3) When determining or adjusting the coastal boundary of the coastal protection zone the MEC must take into account—
- (a) the purpose for which the coastal protection zone is established;
 - (b) the importance for coastal management to incorporate into the coastal protection zone land inland of the high-water mark that is not coastal public property but 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 the number and severity of natural disasters to increase due to the effects of global climate change and other impacts on the environment, and the importance of taking preventive measures to address these threats;
 - (e) the importance of allowing for the movement of the position of the high water mark over time and of protecting the inland coastal boundary of coastal public property by demarcating a continuous strip of land adjacent to it; and
 - (f) any other factor that may be prescribed.

Determining and adjusting coastal boundaries of coastal access land

- 29.** When determining or adjusting a coastal 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 public access may cause, including those caused by—
 - (i) associated infrastructure;
 - (ii) vehicles, vessels or other conveyances; and
 - (iii) increased numbers of people; 5
- (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. 10

Entry onto land

30. (1) The Minister, an MEC or a municipality may, for the purpose of determining or adjusting a coastal boundary in terms of section 26, authorise any person to enter at any reasonable time, after reasonable notice to the owner or occupier of land or premises, other than residential premises, without a warrant, to— 15

- (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. 20

(2) Any person authorised in terms of subsection (1) to enter land or premises must on demand by any person, produce proof of his or her identity and authority to enter such land or premises.

(3) Where the owner of any land or premises has refused entrance or cannot be found, the Minister, an MEC or a municipality may apply to the High Court for an appropriate order. 25

(4) The Minister, an MEC or a municipality must compensate the owner for any damage, or repair any damage, arising from any act performed or carried out on the land or premises in the exercise of any power conferred in terms of this section.

Marking coastal boundaries on zoning maps 30

31. If the Minister, an MEC or a municipality determines or adjusts a coastal boundary in accordance with section 26, a local municipality within whose area of jurisdiction the coastal boundary is situated must delineate that coastal boundary on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the coastal boundary in relation to existing cadastral boundaries. 35

Endorsements by Registrar of Deeds

32. (1) The Minister, an MEC or a municipality, as may be appropriate, must notify the relevant Registrar of Deeds in writing whenever a coastal boundary has been determined or adjusted in terms of section 26(1) or an area or land has been demarcated in terms of section 26(2). 40

(2) The notification to the relevant Registrar of Deeds must—

- (a) include a description of the land involved; or
- (b) be accompanied by a diagram as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997), of the land involved which is signed by a land surveyor. 45

(3) On receipt of the notification contemplated in subsection (2), the relevant Registrar of Deeds must in accordance with section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), make a note in the relevant register of the determination or adjustment of a coastal boundary or a demarcation. 50

CHAPTER 4

ESTUARIES

National estuarine management protocol

- 33.** (1) Estuaries within the Republic must be managed in a co-ordinated and efficient manner and in accordance with a national estuarine management protocol. 5
- (2) The Minister, with the concurrence of the Minister responsible for water affairs, must within four years of the commencement of this Act 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; 10
 - (b) set standards for the management of estuaries;
 - (c) establish procedures or give guidance regarding how estuaries must be managed and how the management responsibilities are to be exercised by different organs of state and other parties; 15
 - (d) establish minimum requirements for estuarine management plans;
 - (e) identify who must prepare estuarine management plans and the process to be followed in doing so; 20
 - (f) specify the process for reviewing estuarine management plans to ensure that they comply with the requirements of this Act; and
 - (g) be published for public comment in accordance with the procedure set out in Part 5 of Chapter 6. 20

Estuarine management plan

- 34.** (1) The responsible body contemplated in section 33(3)(e) who develops an estuarine management plan must — 25
- (a) follow a public participation process in accordance with Part 5 of Chapter 6; and
 - (b) ensure that the estuarine management plan and the process by which it is developed are consistent with— 30
 - (i) the national estuarine management protocol; and
 - (ii) the national coastal management programme and with the applicable provincial coastal management programme and municipal coastal management programme referred to in Parts 1, 2 and 3 of Chapter 6.
- (2) An estuarine management plan may form an integral part of a provincial coastal management programme or a municipal coastal management programme. 35

CHAPTER 5

INSTITUTIONAL ARRANGEMENTS

Part 1

National Coastal Committee

Establishment and functions of National Coastal Committee 40

- 35.** (1) The Minister must by notice in the *Gazette* establish a National Coastal Committee and determine its powers.
- (2) The Department must provide administrative support to the National Coastal Committee.
- (3) The National Coastal Committee must promote integrated coastal management in the Republic and effective co-operative governance by co-ordinating the effective implementation of this Act and of the national coastal management programme, and in particular must— 45
- (a) promote integrated coastal management— 50
 - (i) within each sphere of government;
 - (ii) between different spheres of government; and

- (iii) between organs of state and other parties concerned with coastal management;
- (b) promote the integration of coastal management concerns and objectives into—
 - (i) those environmental implementation plans and environmental management plans referred to in Chapter 3 of the National Environmental Management Act to which they are relevant; 5
 - (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 10
- (c) perform any function delegated to it.

Composition of National Coastal Committee

- 36.** (1) The Minister appoints the members of the National Coastal Committee.
- (2) (a) The persons to be appointed in terms of subsection (1) must, by virtue of the office that they hold or their expertise, be able to assist the National Coastal Committee in fulfilling its functions. 15
- (b) When appointing persons in terms of subsection (1), the Minister must ensure that the National Coastal Committee includes—
- (i) persons with expertise in fields relevant to coastal management and coastal ecosystems; 20
 - (ii) a representative from each Provincial Coastal Committee;
 - (iii) one or more members representing municipalities in the coastal zone;
 - (iv) representatives of national government departments which play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment, including representatives of the departments responsible for agriculture, minerals and energy, transport, public works, provincial and local government, land affairs, water affairs and forestry and trade and industry; and 25
 - (v) one or more members representing the management authorities of coastal protected areas. 30
- (3) The Minister may, on the basis of the criteria referred to in subsection (2), appoint—
- (a) an alternate member for any member of the National Coastal Committee; and
 - (b) a replacement for any member who vacates his or her office. 35
- (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— 40
- (a) becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the National Coastal Committee;
 - (b) ceases to hold any office necessary for his or her appointment to the National Coastal Committee; or
 - (c) tenders his or her resignation and a Minister accepts it. 45
- (2) The Minister may terminate membership of a member of the National Coastal Committee where—
- (a) that member fails to perform the duties of a member as required in terms of this Act;
 - (b) that member obstructs or impedes the National Coastal Committee in the performance of its functions in terms of this Act; 50
 - (c) that member brings the National Coastal Committee 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 of the commencement of this Act, designate a provincial organ of state to function as the lead agency for coastal management in the province and must ensure that there is at all times a lead agency for coastal management in the province which is responsible to the MEC. 5

(2) Each provincial lead agency must, within the province—

- (a) co-ordinate the implementation of the provincial coastal management programme referred to in Part 2 of Chapter 6; 10
- (b) monitor coastal management in the province 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 environment in the coastal zone and relevant trends affecting that environment, and identify provincial priority issues; 15
- (d) co-ordinate the preparation of a provincial state of the coast report required by section 93(2);
- (e) provide logistical and administrative support to the Provincial Coastal Committee established in accordance with section 39;
- (f) review reports that relate to determinations and adjustments under Chapter 3 or that concern policies that may impact on the coastal zone; 20
- (g) promote, in collaboration with other appropriate bodies and organisations, training, education and public awareness programmes relating to the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources; 25
- (h) take all reasonably practical measures to monitor compliance with, and to enforce, this Act, either alone or in co-operation with other enforcement agencies; and
- (i) perform any other functions assigned to it by the Minister or the MEC under this Act. 30

(3) The Premier may assign some of the functions referred to in subsection (1) to any organ of state other than the lead agency in the province.

Part 3

Provincial Coastal Committees

Establishment and functions of Provincial Coastal Committees 35

39. (1) Each MEC must within 12 months of the commencement of this Act establish a Provincial Coastal Committee for the province.

(2) A Provincial Coastal Committee must—

- (a) promote integrated coastal management in the province and the co-ordinated and effective implementation of this Act and the provincial coastal management programme; 40
- (b) advise the MEC, the provincial lead agency and the National Coastal Committee on matters concerning coastal management in the province;
- (c) advise the MEC on developing, finalising, reviewing and amending the provincial coastal management programme; 45
- (d) promote a co-ordinated, inclusive and integrated approach to coastal management within the province by providing a forum for, and promoting, dialogue, co-operation and co-ordination between the key organs of state and other persons involved in coastal management in the province;
- (e) promote the integration of coastal management concerns and objectives into the plans, programmes and policies of other organs of state whose activities may have caused or may cause adverse effects on the coastal environment; 50
- and
- (f) perform any function delegated to it.

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 including representatives of government who play a significant role in undertaking or regulating activities that may have an adverse impact on the coastal environment. 5

(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 10

(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; 15

(ii) one or more members representing municipalities in the coastal zone;

(iii) one or more members representing community based and non-government organisations; and

(iv) one or more members representing scientific or coastal research institutes. 20

(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. 25

(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. 30

Vacation of office and termination of membership

41. (1) A member of a Provincial Coastal Committee vacates office if he or she—

(a) becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the Provincial Coastal Committee; 35

(b) ceases to hold any office necessary for his or her appointment to the Provincial Coastal Committee; or

(c) tenders his or her resignation and the MEC accepts it.

(2) The MEC may terminate membership of the member of the Provincial Coastal Committee where— 40

(a) he or she fails to perform the duties of a member as required in terms of this Act;

(b) he or she obstructs or impedes the Provincial Coastal Committee in the performance of its functions in terms of this Act;

(c) he or she brings the Provincial Coastal Committee into disrepute; or 45

(d) such termination is in the interest of the public.

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 for the municipality and, subject to subsection (4), determine its powers. 50

(2) Any local municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and, subject to subsection (4), determine its powers, which may include the power to establish local subcommittees of the municipal coastal committee. 55

- (3) A municipal coastal committee contemplated in subsections (1) and (2) may include—
- (a) persons with expertise in fields relevant to coastal management; and
 - (b) representatives of the management authorities of coastal protected areas or special management areas within the municipality; and 5
 - (c) representatives of communities or organisations with a particular interest in contributing to effective coastal management, such as port authorities, organs of state, persons whose livelihoods or businesses rely on the use of coastal resources, environmental interest groups and research organisations.
- (4) A municipal coastal committee contemplated in subsections (1) and (2) may— 10
- (a) promote integrated coastal management in the municipality and the co-ordinated and effective implementation of this Act and the municipal coastal management programme;
 - (b) advise the municipal manager, the municipal council and the provincial coastal committee on matters concerning coastal management within the area 15 of jurisdiction of the municipal coastal committee;
 - (c) advise the municipality on developing, finalising, reviewing and amending the municipal coastal management programme;
 - (d) promote a co-ordinated, inclusive and integrated approach to coastal management within the municipality by providing a forum for, and 20 promoting, dialogue, co-operation and co-ordination between the key organs of state and other persons involved in coastal management within its area of jurisdiction;
 - (e) promote the integration of coastal management concerns and objectives into the municipality's integrated development plan and spatial development 25 framework and into other municipal plans, programmes and policies that affect the coastal environment; and
 - (f) perform any coastal governance function delegated to it.

Part 5

Voluntary Coastal Officers 30

Voluntary coastal officers

- 43.** (1) The MEC of a coastal province may appoint any member of the public who has appropriate expertise 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 in a manner that conserves and protects coastal 35 public property.
- (3) The MEC must—
- (a) prescribe the powers and duties of voluntary coastal officers;
 - (b) clearly define the responsibilities and duties of each voluntary coastal officer in his or her letter of appointment; and 40
 - (c) issue each voluntary coastal officer with an identity card that confirms his or her appointment.
- (4) A voluntary coastal officer who is exercising powers or performing functions in terms of this Act must produce his or her identity card at the request of a member of the 45 public.

CHAPTER 6

COASTAL MANAGEMENT

*Part 1**National coastal management programme***Preparation and adoption of national coastal management programme** 5**44.** (1) The Minister—

- (a) must within four years after this Act takes effect, prepare and adopt a national coastal management programme for managing the coastal zone;
- (b) must review the programme at least once every five years; and
- (c) may, when necessary, amend the programme. 10

(2) Before adopting a programme contemplated in subsection (1)(a), the Minister must by notice in the *Gazette* invite members of the public to submit to the Minister, within 30 days of such notice, written representations on or objections to the programme.

(3) The Minister must, within 60 days of the adoption of the national coastal management programme or of any substantial amendment to it— 15

- (a) give notice to the public—
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from, the programme are available for public inspection at specified places; and 20
- (b) publicise a summary of the programme.

Contents of national coastal management programme**45.** (1) The national coastal management programme must—

- (a) be a policy directive on integrated coastal management; and
- (b) provide for an integrated, co-ordinated and uniform approach to coastal management by organs of state in all spheres of government, non-governmental organisations, the private sector and local communities. 25

(2) The national coastal management programme must include the following components:

- (a) A national vision for coastal management in the Republic, including the sustainable use of coastal resources; 30
- (b) national coastal management objectives;
- (c) priorities and strategies to achieve those objectives;
- (d) performance indicators to measure progress with the achievement of those objectives; 35
- (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 to implement measures concerning coastal management that— 40
 - (i) identifies the responsibilities of different organs of state, including their responsibilities in relation to marginalised or previously disadvantaged communities that are dependent on coastal resources for their livelihood; and
 - (ii) facilitates co-ordinated and integrated coastal management. 45

Part 2

Provincial coastal management programmes

Preparation and adoption of provincial coastal management programmes

- 46.** (1) The MEC of each coastal province—
- (a) must within four years of the commencement of this Act, prepare and adopt a provincial coastal management programme for managing the coastal zone in the province; 5
 - (b) must review the programme at least once every five years; and
 - (c) may, when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), the MEC must by notice in the *Gazette* invite members of the public to submit to the MEC, within 30 days of such notice, written representations on or objections to the programme. 10
- (3) The MEC must, within 60 days of the adoption of the provincial coastal management programme or of any substantial amendment to it—
- (a) give notice to the public— 15
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from, the programme are available for public inspection at specified places; and
 - (b) publicise a summary of the programme.
- (4) If the province has a provincial land development plan or an integrated development plan, programme or strategy, its coastal management programme may form part of that plan, programme or strategy. 20

Contents of provincial coastal management programmes

- 47.** (1) A provincial coastal management programme must—
- (a) be a provincial policy directive for the management of the coastal zone in the province; 25
 - (b) provide for an integrated, coordinated and uniform approach to coastal management in the province; and
 - (c) be consistent with—
 - (i) the national coastal management programme; and 30
 - (ii) the national estuarine management protocol.
- (2) A provincial coastal management programme must include—
- (a) a vision for the management of the coastal zone in the province, including the sustainable use of coastal resources;
 - (b) the coastal management objectives for the coastal zone in the province and for specific parts of the coastal zone; 35
 - (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 as applicable in the province; 40
 - (iii) to develop estuarine management plans for estuaries in the province; and
 - (d) performance indicators to measure progress with the achievement of those objectives.
- (3) A provincial coastal management programme may include a programme of projected expenditure and investment by the provincial government in order to implement the provincial coastal management programme. 45

Part 3

Municipal coastal management programmes

Preparation and adoption of municipal coastal management programmes

- 48.** (1) A coastal municipality—
- (a) must, within four years of the commencement of this Act, prepare and adopt a municipal coastal management programme for managing the coastal zone or specific parts of the coastal zone in the municipality; 5
 - (b) must review any programme adopted by it at least once every five years; and
 - (c) may, when necessary, amend the programme.
- (2) Before adopting a programme contemplated in subsection (1)(a), a municipality must by notice in the *Gazette* invite members of the public to submit written representations on or objections to the programme in accordance with the procedure contemplated in Chapter 4 of the Municipal Systems Act. 10
- (3) A municipality must, within 60 days of the adoption of the municipal coastal management programme or of any substantial amendment to it— 15
- (a) give notice to the public—
 - (i) of the adoption of the programme; and
 - (ii) that copies of, or extracts from the programme are available for public inspection at specified places; and
 - (b) publicise a summary of the programme. 20
- (4) A municipality may prepare and adopt a coastal management programme as part of an integrated development plan and spatial development framework adopted in accordance with the Municipal Systems Act and if it does so, compliance with the public participation requirements prescribed in terms of the Municipal Systems Act for the preparation and adoption of integrated development plans will be regarded as 25 compliance with public participation requirements in terms of this Act.

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 30
 - (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; 35
 - (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 40
 - (ii) to assist in the achievement of the national and provincial coastal management objectives as may be applicable in the municipality;
 - (iii) to address the high percentage of vacant plots and the low occupancy levels of residential dwellings;
 - (iv) to equitably designate zones as contemplated in section 56(1)(a)(i) for the purposes of mixed cost housing and taking into account the needs of previously disadvantaged individuals; 45
 - (v) to address coastal erosion and accretion; and
 - (vi) to deal with access issues.
 - (d) performance indicators to measure progress with the achievement of those objectives. 50
- (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; 55
 - (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.

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. 5

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 National Environmental Management Act, an integrated development plan in terms of the Municipal Systems Act and a provincial or municipal land development plan must— 10

- (a) be aligned with the national coastal management programme and any applicable provincial coastal management programme; 15
- (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. 20

Ensuring consistency between coastal management programmes and other statutory plans

52. (1) For the purposes of this section, “statutory plan” means a plan, policy or programme adopted by an organ of state that may affect coastal management, and without limitation, may include— 25

- (a) an environmental implementation or environmental management plan prepared in terms of Chapter 3 of the National Environmental Management Act;
- (b) an integrated development plan adopted by a municipality in terms of the Municipal Systems Act;
- (c) the national biodiversity framework referred to in section 38 of the Biodiversity Act and a bioregional plan prepared in terms of that Act; 30
- (d) a provincial or municipal land development plan;
- (e) a provincial strategic policy and plan concerned with promoting sustainable development; and
- (f) the national estuarine management protocol. 35

(2) The Minister must ensure that there is consistency between the national coastal management plan and other statutory plans adopted by a national organ of state.

(3) The MEC must ensure that there is consistency between the provincial coastal management plan and other statutory plans adopted by either a national or a provincial organ of state. 40

(4) Each municipality in the coastal zone must ensure that its integrated development plan (including its spatial development framework) is consistent with other statutory plans adopted by either a national or a provincial organ of state.

(5) If there is a conflict between the provisions of a coastal management programme and the provisions of another statutory plan, the person responsible under subsections (2), (3) or (4) to ensure consistency must discuss the conflict with the organ of state responsible for that statutory plan in order to resolve the conflict, failing which the conflict must be dealt with in accordance with Chapter 4 of the National Environmental Management Act. 45

(6) Conflicts between a coastal management programme and other statutory plans must be resolved in a manner that best promotes the objects of this Act. 50

(7) Once the parties referred to in subsection (5) have resolved the conflict they must make appropriate amendments to one or more of such conflicting plans.

Part 5

Public participation

Consultation and public participation

53. (1) Before exercising a power, which this Act requires to be exercised in accordance with this section, the Minister, MEC, municipality or other person exercising that power must— 5

- (a) consult with all Ministers, MEC's or municipalities whose areas of responsibilities will be affected by the exercise of the powers in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution; 10
- (b) publish or broadcast his or her intention to do so in a manner that is reasonably likely to bring it to the attention of the public; and
- (c) by notice in the *Gazette*—
 - (i) invite members of the public to submit, within no less than 30 days of such notice, written representations or objections to the proposed exercise of power; and 15
 - (ii) contain sufficient information to enable members of the public to submit representations or objections.

Part 6

Review of coastal management programmes 20

Powers of Minister to review coastal management programmes

54. (1) The Minister may at any time review any provincial coastal management programme.

(2) The Minister must, in reviewing the provincial coastal management programme, determine whether or not it— 25

- (a) meets the requirements specified in section 47;
- (b) is consistent with the national coastal management programme;
- (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. 30

(3) If the Minister believes that a provincial coastal management programme does not meet all the criteria referred to in subsection (2), the Minister must by notice to the MEC of the province concerned, require the MEC to amend or replace the provincial coastal management programme within a reasonable period, which must be specified in the notice. 35

(4) An MEC who receives a notice in terms of subsection (3) must amend or replace the provincial coastal management programme by following the same procedure used to prepare and adopt it in terms of this Act, except that the new or amended coastal management programme may not be finally adopted without the consent of the Minister.

(5) (a) The Minister may request an MEC to review a municipal coastal management programme under section 55. 40

(b) If the MEC is unable or unwilling to review the municipal coastal management programme within a reasonable period, the Minister may do so, in which case section 55 applies with the necessary changes.

Review of municipal coastal management programmes 45

55. (1) The MEC may at any time review a municipal coastal management programme.

(2) The MEC must, in reviewing the municipal coastal management programme, determine whether or not it—

- (a) meets the requirements specified in section 49; 50
- (b) is consistent with the national and the provincial coastal management programmes;
- (c) gives adequate protection to coastal public property; and

(d) was prepared in a manner that allowed for effective participation by interested and affected parties.

(3) If, after considering the advice of the Provincial Coastal Committee, the MEC believes that a municipal coastal management programme does not meet all the criteria referred to in subsection (2), the MEC must, by notice to the municipality concerned, require the municipality to amend or replace the municipal coastal management programme within a reasonable period, which must be specified in the notice.

(4) A municipality that receives a notice in terms of subsection (3), must amend or replace the municipal coastal management programme by following the same procedure used to prepare and adopt it in terms of this Act except that the new or amended coastal management programme may not be finally adopted without the consent of the MEC.

Part 7

Coastal planning schemes

Planning schemes for areas within coastal zone

56. (1) A coastal planning scheme is a scheme that facilitates the attainment of coastal management objectives by—

- (a) defining areas within the coastal zone or coastal management area which may—
 - (i) be used exclusively or mainly for specified purposes or activities; or
 - (ii) not be used for specified purposes or activities; and
- (b) prohibiting or restricting activities or uses of areas that do not comply with the rules of the scheme.

(2) A coastal planning 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.

(3) A coastal planning scheme may be established and implemented for an area within the coastal zone by—

- (a) the Minister, after consultation with the MEC and with any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme applies to—
 - (i) an area of coastal public property 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 person in which the authority to manage a coastal protected area is vested, if the planning scheme only applies within that protected area;
- (c) the MEC, after consultation with the Minister and any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme is not one referred to in paragraph (a) or (b) and applies to an area of the coastal zone within the province;
- (d) the municipality, in consultation with the MEC and after consultation with any authority that is responsible for managing an area to which the planning scheme applies, if the planning scheme is not one referred to in paragraphs (a) or (b) and applies to an area falling within its jurisdiction; and
- (e) the management authority of a special management area, in consultation with the MEC and after consultation with the municipality, if the planning scheme only applies within that management area.

(4) A coastal planning scheme established by—

- (a) the Minister takes precedence over any other coastal planning scheme;
- (b) the person in which the authority to manage a coastal protected area is vested, takes precedence within that protected area over any other coastal planning scheme except one established by the Minister;

- (c) an MEC takes precedence over any other coastal planning scheme except one established by the Minister or the management authority for a coastal protected area; or
- (d) a municipality takes precedence over any other coastal planning scheme except one established by the Minister or the MEC, or established within a coastal protected area by the management authority for that protected area. 5
- (5) A coastal planning scheme may only be established with the consent of—
- (a) the Minister, if the scheme applies to an area that extends into the sea further than 500 metres from the high-water mark or affects the protection or use of marine living resources; or 10
- (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 planning scheme may not create any rights to use land or coastal waters.

Coastal planning and land use schemes of municipalities 15

- 57.** (1) Subject to section 56(5), a coastal planning 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 planning scheme established in terms of this Act.
- (b) If there is a conflict between a municipal land use scheme established after the commencement of this Act and a coastal planning scheme made in terms of this Act, the coastal planning scheme shall prevail. 20

CHAPTER 7

PROTECTION OF COASTAL ENVIRONMENT

Part 1 25

Assessing, avoiding and minimising adverse effects

Duty to avoid causing adverse effects on coastal environment

- 58.** (1) (a) Section 28 of the National Environmental Management Act applies, subject to the necessary changes, to any impact caused by any person and that has an adverse effect on the coastal environment. 30
- (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. 35
- (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 40
 - (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; 45
 - (iii) the owner or person in charge of a vessel, aircraft, 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; 50
 - (iv) the operator of a pipeline that ends in the coastal zone; or
 - (v) any person who produced or discharged 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 has reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the coastal environment then, subject to subsection (2), he or she may issue a written coastal protection notice to the person responsible for that activity— 5
- (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 in terms of this Act or any other applicable legislation to protect the environment;
 - (ii) to investigate and evaluate the impact of an activity on an aspect of the coastal environment in accordance with Chapter 5 of the National Environmental Management Act; or 10
 - (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 the report. 15
- (2) Before exercising a power to issue a coastal protection notice under subsection (1), 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 to whom the coastal protection notice is to be addressed, an opportunity of making representations. 20
- (3) Notwithstanding section 87, the power of the Minister to issue a coastal protection notice in terms of subsection (1) may only be delegated to—
- (a) the MEC, who may subdelegate this power to a municipality in that province; or 25
 - (b) an official in the Department.
- (4) A coastal protection notice in terms of subsection (1)—
- (a) must state—
 - (i) the reasons for the notice;
 - (ii) the period within which anything required by the notice must be carried out; and 30
 - (iii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9;
 - (b) may instruct the person to whom it is addressed, among other matters—
 - (i) to build, maintain or demolish any specified works; 35
 - (ii) to close a public access or prevent unauthorised access to coastal public property at a specified place;
 - (iii) to plant, cultivate, preserve or stop damaging indigenous vegetation at a specified place;
 - (iv) to stop altering the geographical features of land at a specified place; 40
 - (v) to build or maintain any specified works at a specified place to protect land from wind erosion;
 - (vi) to rehabilitate land at a specified place;
 - (vii) to remove stock from land; or
 - (viii) to take measures to protect indigenous fauna. 45
- (5) If the Minister has reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, the Minister may issue a written coastal access notice to that person—
- (a) prohibiting the activity if it is not already prohibited in terms of this Act; and 50
 - (b) instructing that person to take appropriate steps in terms of this Act or any other applicable legislation to allow natural persons access to the coastal public property.
- (6) When issuing a notice contemplated in subsection (5), subsections (2), (3) and (4) apply with the necessary changes. 55

Repair or removal of structures within coastal zone

- 60.** (1) The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure—
- (a) is having or is likely to have an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or 5
 - (b) has been erected, constructed or upgraded in contravention of this Act or any other law.
- (2) Before exercising a power to issue a repair and removal notice under subsection (1), the Minister or MEC must— 10
- (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 to whom the repair and removal notice is to be addressed an opportunity to make representations.
- (3) Notwithstanding section 89 the power instead of issuing a notice in accordance with subsection (4) of the Minister to issue a repair and removal notice in terms of subsection (1) may only be delegated to— 15
- (a) the MEC who may subdelegate this power to a municipality in that province; or
 - (b) an official in the relevant department. 20
- (4) A repair and removal notice in terms of subsection (1)—
- (a) must state—
 - (i) the reasons for the notice; and
 - (ii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9; and 25
 - (b) may instruct the person responsible for the structure—
 - (i) to remove the structure from the coastal zone or place where it is situated within a specified period;
 - (ii) to rehabilitate the site and as far as is reasonable, to restore it to a natural state; 30
 - (iii) to repair the structure to the satisfaction of the Minister or the MEC within the time stated in the notice; or
 - (iv) to take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure.
- (5) If a person responsible for a structure referred to in subsection (1) cannot readily be found, the Minister or the MEC, instead of issuing a notice in accordance with subsection (4), may— 35
- (a) publish a notice that complies with the provisions of subsection (2) once in the *Gazette* and once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and 40
 - (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 notice issued in terms of section 59(1) or (5) or section 60(1) which requires that person to carry out any specific action, or if the person responsible is not identified after publication of a notice in terms of section 60(5), the Minister or the MEC who issued the notice may instruct appropriate persons to— 45
- (a) carry out what is required by the notice; and
 - (b) recover from the person to whom the notice was addressed, or in the circumstances referred to in section 60(4) from any person subsequently found to be responsible for the structure, the costs reasonably incurred in carrying out the required action. 50

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, in a manner that conforms to the principles of co-operative governance contained in Chapter 3 of the Constitution, 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 as set out in section 17. 5

(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. 10

Part 3

Environmental authorisations

Environmental authorisations for coastal activities 15

63. (1) Where an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act is required for coastal activities, the competent authority must take into account all relevant factors, including—

- (a) the representations made by the applicant and by interested and affected parties; 20
- (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; 25
- (d) the estuarine management plans, coastal management programmes and coastal management objectives applicable in the area;
- (e) the socio-economic impact if the activity—
 - (i) is authorised; 30
 - (ii) is not authorised;
- (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; 35 and
- (h) the objects of this Act, where applicable.

(2) The competent authority may not issue an environmental authorisation if the development or activity for which authorisation is sought—

- (a) is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations; 40
- (b) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;
- (c) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18; 45
- (d) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
- (e) is likely to be significantly damaged or prejudiced by dynamic coastal processes; 50
- (f) would substantially 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 environmental authorisation in respect of an activity or a development that does not meet the criteria referred to in subsection (2)(a), (b) or (c) if— 55

- (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. 5
- (4) If an application for an environmental authorisation cannot be approved by the competent authority because of a provision of subsection (2), but the competent authority believes that issuing the authorisation would be in the public interest, the competent authority may refer the application for consideration by the Minister in terms of section 64. 10
- (5) The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned. 15
- (6) Where an environmental authorisation is not required for coastal activities, the Minister may, by notice in the *Gazette* list such activities requiring a permit or licence.

Minister may grant environmental authorisation in interests of whole community

- 64.** (1) If an application for an environmental authorisation is referred to the Minister in terms of section 63(4) the Minister may, after consultation with the MEC of the relevant province, issue or authorise the other relevant competent authority to issue the environmental authorisation— 20
- (a) if the activity for which the environmental authorisation is required is overwhelmingly in the interests of the whole community despite the adverse effect it is likely to cause to the coastal zone; and 25
 - (b) on condition that any irreversible or long-lasting adverse effects must be mitigated as far as is reasonably possible.
- (2) Before deciding the application, the Minister may require the applicant to furnish additional information, including the results of any further studies undertaken. 30

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 95, 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. 35
- (2) Subject to section 95, 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 he or she—
- (a) is empowered by national legislation to do so; or 40
 - (b) is authorised to do so in terms of—
 - (i) a coastal concession awarded by the Minister in terms of this Chapter; or
 - (ii) an authorisation issued under the Marine Living Resources Act.
- (3) A coastal lease or coastal concession may be awarded by the Minister either— 45
- (a) on application by a person; or
 - (b) if the Minister so determines in any specific case, through a prescribed bid process.
- (4) An application for a coastal lease or coastal concession must be lodged in the prescribed manner.
- (5) A coastal lease or coastal concession awarded in terms of this Chapter does not relieve the lessee or concessionaire from the obligation to— 50
- (a) obtain any other authorisation that may be required in terms of this Act or other legislation; 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 a fixed period of time of not more than 20 years;
 - (b) is subject to any prescribed conditions or as may be determined by the Minister in any specific case; and
 - (c) must provide for the payment by the lessee or concessionaire of a reasonable rent.
- (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 either exclusively or for specified purposes.

Part 5

General provisions

Temporary occupation of land within coastal zone

- 67.** (1) Subject to the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may direct that land within the coastal zone be temporarily occupied to build, maintain or repair works to implement a coastal management programme, or to respond to pollution incidents or emergency situations, and may for this purpose—
- (a) take from the land stone, gravel, sand, earth or other material;
 - (b) deposit materials on it; and
 - (c) construct and use temporary works on it, including roads.
- (2) Notwithstanding section 89, the powers of the Minister in terms of subsection (1) may be delegated to—
- (a) the MEC, who may subdelegate this power to a municipality in that province; or
 - (b) an official in that Department.
- (3) If the land is private property, the Minister or the MEC, acting in terms of subsection (1), must, before the land is occupied, give the occupier and the owner of the land reasonable notice, in writing, 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 issued in terms of this Act, if—
- (a) the holder of the authorisation contravenes or fails to comply with a condition subject to which the authorisation was issued;
 - (b) it is in conflict with a coastal management programme or will significantly prejudice the attainment of a coastal management objective;
 - (c) changes in circumstances require such amendment, revocation, suspension or cancellation; or
 - (d) it is necessary to meet the Republic's international obligations.
- (2) An issuing authority must by written notice delivered to the holder of the authorisation, or sent by registered post to the holder's last known address, request the holder to make written representations within a period of 30 days from the date of the notice as to why the authorisation should not be amended, revoked, suspended or cancelled, as the case may be.
- (3) After the expiry of the period referred to in subsection (2) the issuing authority must consider the matter in the light of all relevant circumstances, including any representations made by the holder, and may—
- (a) revoke the authorisation;
 - (b) suspend the authorisation for a period determined by the issuing authority;
 - (c) cancel the authorisation from a date determined by the issuing authority;
 - (d) alter the terms or conditions of the authorisation; or
 - (e) decide not to amend, revoke, suspend or cancel the authorisation.
- (4) Notwithstanding subsections (2) and (3), the issuing authority may, whenever it is in the interests of the promotion, protection or utilisation on a sustainable basis of the coastal zone, at any time by written notice to the holder of an authorisation amend, revoke, suspend or cancel the authorisation.

(5) If the issuing authority intends to exercise the powers under subsection (4), subsection (2) apply with the necessary changes.

(6) If the Minister or an issuing authority has reason to believe that it is urgently necessary to exercise powers under subsections (1), (3) or (4) in order to protect the coastal environment or human health and well-being, the Minister or issuing authority may, by notice to the holder of an authorisation, temporarily suspend the authorisation and then follow the procedure referred to in subsection (3).

(7) A competent authority, when exercising the power to amend, withdraw or suspend an environmental authorisation in terms of the National Environmental Management Act, must consider the factors referred to in subsections (1), (4), (5) and (6) with the necessary changes.

CHAPTER 8

MARINE AND COASTAL POLLUTION CONTROL

Discharge of effluent into coastal waters

69. (1) No person may discharge effluent that originates from a source on land into coastal waters except in terms of a general authorisation contemplated in subsection (2) or a coastal waters discharge permit issued under this section by the Minister after consultation with the Minister responsible for water affairs in instances of discharge of effluent into an estuary.

(2) The Minister may by notice in the *Gazette* authorise persons in general, or a category of persons, to discharge effluent into coastal waters, and in instances of discharge of effluent into an estuary, only after consultation with the Minister responsible for water affairs.

(3) Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a general authorisation referred to in subsection (2) must apply to the Department for a coastal waters discharge permit.

(4) Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general authorisation under subsection (2) must apply to the Department for a coastal waters discharge permit—

- (a) within 24 months of the date of commencement of this Act if the discharge is in terms of a licence or authorisation under the National Water Act; or
- (b) within 36 months of the date of commencement of this Act if the discharge is a continuation of an existing lawful water use within the meaning of section 32 or 33 of the National Water Act.

(5) Unless a person referred to in subsection (4) is directed otherwise by a person acting in terms of this Act or the National Water Act, it is not an offence for that person to discharge effluent that originates from a source on land into coastal waters if—

- (a) that person has made an application under subsection (4) but has not yet been notified whether the application has been granted or refused; or
- (b) the applicable period referred to in subsection (4)(a) or (b) has not yet expired.

(6) A person who discharges effluent into coastal waters—

- (a) must not waste water;
- (b) may only do so to the extent that it is not reasonably practicable to return any freshwater in that effluent to the water resource from which it was taken;
- (c) must discharge the effluent subject to any condition contained in the relevant authorisation;
- (d) must comply with any applicable waste standards or water management practices prescribed under this Act or under section 29 of the National Water Act or any Act of Parliament specifically dealing with waste, unless the conditions of the relevant authorisation provide otherwise; and
- (e) must register the discharge with the department responsible for water affairs.

(7) The Minister, and in instances of discharge of effluent into an estuary, with the concurrence of the Minister responsible for water affairs, must, when deciding whether or not to issue a general authorisation contemplated in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including—

- (a) the interests of the whole community;
- (b) the socio-economic impact if the disposal—

- (i) is authorised;
- (ii) is not authorised;
- (c) the coastal management programmes and estuarine management plans applicable in the area;
- (d) the likely impact of the proposed disposal on the coastal environment, including, the cumulative effect of its impact together with those of existing point and non-point discharges. 5
- (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. 10
- (8) The Minister may not grant an application in terms of subsection (3) for a coastal waters discharge permit if doing so is likely—
 - (a) to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
 - (b) to prejudice significantly the achievement of any coastal management objective contained in a coastal management programme; or 15
 - (c) to be contrary to the interests of the whole community.
- (9) (a) The Director-General must within five years of the date of commencement of this Act—
 - (i) review all authorisations issued before the commencement of this Act that authorise the discharge of effluent into coastal waters; and 20
 - (ii) in consultation with the director-general of the department responsible for water affairs undertake a joint review of all authorisations issued before the commencement of this Act that authorised the discharge of effluent into estuaries, in order to determine the extent to which those authorisations comply with the requirements of this Act and of other applicable legislation. 25
- (b) After any such review the Director-General must make recommendations to the Minister and to the Minister responsible for water affairs as to whether or not—
 - (i) the discharge should be prohibited;
 - (ii) in the case of a discharge into the sea, whether or not a permit should be issued under subsection (1); 30
 - (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 subsection (1) and a permit issued under the National Water Act.
- (10) The Minister, and in instances where the discharge takes place into an estuary, with the concurrence of the Minister responsible for water affairs, must as soon as possible after recommendations contemplated in section (9)(b) have been received, decide whether or not to issue a permit or permits referred to in subsection (9) and the conditions that will apply to any permits issued, but before doing so, must give the holders of the authorisations a reasonable opportunity of making representations. 35
- (11) An organ of state that issues a permit under subsection (1) must report every three years in the prescribed form to the National Coastal Committee on the status of each pipeline that discharges effluent into coastal waters and its impact on the coastal environment.
- (12) The Minister may, when performing functions in terms of subsections (1), (7) 45 and (10), 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; or 50
 - (ii) aboard a South African vessel;
 - (b) import into the Republic any waste or other material to be dumped or incinerated at sea within the coastal waters or the exclusive economic zone;
 - (c) export from the Republic any waste or other material to be dumped or incinerated— 55
 - (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 at any place in the Republic, including the exclusive economic zone, unless the master of the vessel, aircraft, platform or other structure produces written proof that the dumping at 60

- sea of that waste or other material has been authorised in terms of a dumping permit granted under section 71;
- (e) except on the authority of a dumping permit granted under section 71—
 - (i) dump at sea any waste or other material within the coastal waters or the exclusive economic zone; or 5
 - (ii) dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material on the high seas; or
 - (f) dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material in any area of the sea under the jurisdiction of another state, except with the written permission of that state. 10
- (2) It is a defence to a charge in terms of subsection (1)(e)(i) or (ii) to show—
- (a) that adverse weather conditions necessitated the dumping or incineration at sea in order to secure the safety of human life or of the vessel, aircraft, platform or structure in question; or
 - (b) that there was a danger to human life or a real threat to the vessel, aircraft, platform or structure in question, that there appeared to be no reasonable alternative to dumping or incineration at sea, and that it is probable that the adverse effects arising from the dumping or incineration at sea were less than would otherwise have occurred; and 15
 - (c) that in either case, the dumping or incineration at sea was conducted in a manner that minimised any actual or potential adverse effects and was reported to the Department without delay. 20

Dumping permits

- 71.** (1) A person who wishes to dump at sea any waste or other material must—
- (a) apply in writing to the Minister in the form stipulated by the Minister for a dumping permit that authorises the waste or other material to be loaded aboard a vessel, aircraft, platform or other structure and to be dumped at sea; and 25
 - (b) pay the prescribed fee.
- (2) When deciding an application for a dumping permit contemplated in subsection (1), the Minister must have regard to— 30
- (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 activity;
 - (d) national legislation dealing with waste;
 - (e) the interests of the whole community; 35
 - (f) transboundary impacts and international obligations and standards; and
 - (g) any other factors that may be prescribed.
- (3) The Minister may not grant a dumping permit that authorises the dumping of any waste or other material, other than— 40
- (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 45
 - (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. 50
- (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 55
 - (ii) material which is capable of creating floating debris or otherwise contributing to the pollution of the marine environment and which could be removed from the material proposed for dumping;

- (b) dumping the waste or other material in question—
 - (i) is likely to cause irreversible or long-lasting 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 contained in a coastal management programme; 5
 - (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 specified period of not more than two years 10 but may be renewed once for a 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 referred to in section 71 dispense with any prescribed procedure, including any consultation and public participation processes, if— 15
- (a) the dumping at sea of a quantity of any particular waste or other material 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 in the circumstances contemplated in subsection (1), the Minister must consult with— 20
- (a) any foreign state that is likely to be affected by the proposed dumping at sea; and
 - (b) the International Maritime Organisation.
- (3) The Minister must— 25
- (a) as far as reasonably possible in the circumstances, follow any recommendations received from the International Maritime Organisation when imposing permit conditions regarding the procedures to be followed in conducting the loading or dumping at sea of the relevant quantity of waste or other material; and 30
 - (b) inform the International Maritime Organisation of any action taken under this section within a reasonable period thereafter.

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. 35
- (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. 40

CHAPTER 9

APPEALS

Appeals

- 74.** (1) A person to whom a coastal protection notice or coastal access notice in terms of section 59 or a repair and removal notice in terms of section 60, has been issued, may lodge a written appeal against that notice with— 55
- (a) the Minister, if the notice was issued by an MEC or by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or
 - (b) the MEC of the province concerned, if the notice was issued by a municipality in that province or by a person exercising powers delegated by the MEC in terms of this Act. 50
- (2) A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel an authorisation, may lodge a written appeal against that decision with— 55

- (a) the Minister, if the decision was taken by a person exercising powers which have been delegated by the Minister to such person in terms of this Act; or
- (b) the MEC of the province concerned, if the decision was taken by—
 - (i) a person exercising powers granted or delegated to the MEC that have been delegated by the MEC; 5
 - (ii) a provincial organ of state; or
 - (iii) a municipality in that province.
- (3) An appeal made under subsection (1) or (2) must—
 - (a) be lodged within 30 days of the appellant being given the notice in terms of section 59 or 60, or being notified of the decision, or if the appellant is not given a notice or notified of the decision, within 60 days of the relevant decision being announced; 10
 - (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 which the appellant believes should be considered on appeal; and 15
 - (d) comply with any other requirements that may be prescribed.
- (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. 20
- (5) The Minister or MEC may, on good cause shown, extend the period within which an appeal may be lodged in terms of this Chapter.
- (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 environmental authorisation must be dealt with in terms of the National Environmental Management Act. 25

Advisory Appeal panel

- 75.** (1) The Minister or an MEC may appoint an advisory appeal panel to consider and advise the Minister or the MEC on an appeal.
- (2) An advisory appeal panel must consist of an uneven number of members. 30
- (3) The members appointed by the Minister or an MEC must—
 - (a) have suitable qualifications and experience in relation to the matters that must be considered in the appeal; 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— 35
 - (a) was involved in any way in the making of the decision appealed against;
 - (b) or any spouse, partner 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 40
 - (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. 45

Interim orders by Minister or MEC

- 76.** (1) The Minister or an MEC may, at any time after an appeal has been lodged, make any interim order pending the determination of the appeal, that he or she considers equitable or appropriate to achieve the objects of this Act.
- (2) Without limiting the generality of subsection (1) an interim order may— 50
 - (a) preserve existing rights or an existing state of affairs between the parties to the proceedings;
 - (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. 55
- (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 an 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 an 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. 5

(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. 10

(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; 15
- (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 20
 - (iii) guidelines published or endorsed by the Department or the provincial lead agency concerned.

(4) An advisory appeal panel must give a written report to the Minister or an 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 the chairperson must ensure that any dissenting opinions by members are recorded in the written report of the panel. 25

Determination of appeal by Minister or MEC

78. (1) The Minister or an MEC must consider the appeal and may—

- (a) dismiss the appeal and confirm the decision appealed against; 30
- (b) uphold part or all of the appeal and either vary the decision appealed against or set aside the decision and make a new decision; or
- (c) refer the appeal back to the appeal panel with directions to investigate and consider specific facts or issues and to report back to the Minister or MEC.

(2) In determining an appeal the Minister or an MEC must have regard to— 35

- (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 40

ENFORCEMENT

Offences

79. (1) A person is guilty of a category one offence if that person—

- (a) discharges effluent originating from a source on land into coastal waters in contravention of section 69; 45
- (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; 50
- (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.
- (2) A person is guilty of a category two offence if that person— 5
 - (a) fails to comply with a repair and removal notice issued in terms of section 60;
 - (b) hinders or interferes with a duly authorised person exercising a power or performing 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; 10
- (3) A person who is the holder of an authorisation is guilty of a category three 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; 15
 - 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— 20
 - (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 subsection (1), (2) or (3).

Penalties 25

- 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 to 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 or community service. 30
- (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. 35
- (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.
- (5) A court that sentences any person— 40
 - (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. 45

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.

Actions in relation to coastal zone 50

- 82.** The Minister, an 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 55

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

CHAPTER 11

GENERAL POWERS AND DUTIES

Part 1 *Regulations*

5

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— 10
- (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; 15
 - (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; 20
 - (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— 25
 - (i) the content and regular revision of the coastal management programmes of provinces and municipalities;
 - (ii) the implementation and enforcement of coastal management programmes; 30
 - (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 planning schemes;
 - (v) the quality of coastal public property and coastal ecosystems; 35
 - (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 planning scheme; 40
 - (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 subparagraph (ix) and the methods that should be used to do so;
 - (xi) the appointment, training, powers and supervision of voluntary coastal officers; 50
 - (xii) public safety and behaviour on coastal public property; or
 - (xiii) any activity which has an adverse effect on the coastal environment.
 - (g) the procedures to be followed with the lodging and consideration of applications for authorisations, including — 55
 - (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; 5
 - (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; 10
 - (x) the bid process to be followed for the award of coastal leases and coastal concessions;
 - (h) the contents of authorisations; 15
 - (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;
 - (j) the procedure to be followed in connection with the lodging and consideration of appeals in terms of Chapter 9, including— 20
 - (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; 25
 - (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; 30
 - (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 35
 - (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; 40
 - (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;
 - (q) methods, procedures and conditions for obtaining access to relevant information, including entry to private property; and 45
 - (r) the issuing and contents of permits or licences.
- (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 50
 - (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; 55
 - (b) the Minister responsible for water affairs before making any regulations concerning estuaries; or
 - (c) the MEC and municipalities before making any regulations concerning the coastal zone within that province.

Regulations by MECs

84. (1) The MEC of a province may, after consultation with the Minister, make regulations that are consistent with any national norms or standards that may have been prescribed, relating to—

- (a) the implementation and enforcement of the coastal management programme of the province; 5
- (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; 10
- (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; 15
- (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. 20

(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 and must take any submissions received into account before making any regulations in terms of sections 83 or 84. 25

(2) Subsection (1) need not be applied in the case of a minor or a mere technical amendment to regulations.

(3) Regulations made in terms of section 83 or 84 may— 30

- (a) restrict, prohibit or control any act that may have an adverse effect on the coastal environment, either absolutely or conditionally;
- (b) apply generally—
 - (i) throughout the Republic or province, as the case may be, or only in a specified area or category of areas; 35
 - (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; 40
- (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; 45
- (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 50
 - (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.

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, if all or any part of that area— 5

- (a) extends into the sea for more than 500 metres from the high water mark;
- (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. 10

(2) If subsection (1) applies, the reference to the MEC in section 22 must be read as a reference to the Minister.

Directives by MEC to municipalities

88.(1) An MEC may in writing direct a municipality to take specified measures if the MEC is satisfied that the municipality is not taking adequate measures to— 15

- (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 and giving it a reasonable opportunity to make representations. 20

(3) If the municipality does not comply with a directive under subsection (1) 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. 25

Part 3

Delegations and enforcement

Delegation by Minister

89. (1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to— 30

- (a) the Director-General or to other officials in the Department;
- (b) an 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 with that organ of state, statutory functionary, traditional council or management authority. 35

(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; 40
- (c) must be in writing;
- (d) may include the power to subdelegate; and
- (e) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty. 45

(3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, an organ of state, a statutory functionary, a traditional council or a management authority of a special management area.

(4) The Minister may confirm, vary or revoke any decision made taken in consequence of a delegation or subdelegation in terms of a provision of this Act or of a statute repealed by this Act. 50

(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 made in terms of a provision of this Act or of a statute repealed by this Act.

Enforcement by Minister

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90. (1) The Minister may in writing request an 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;
- (c) give effect to the national coastal management programme; or
- (d) establish set-back lines to implement or monitor compliance with provincial norms and standards.

(2) If the MEC does not comply with a request under subsection (1) the Minister may exercise any powers given to the MEC by this Act in order to take any measures referred to in the request, including the power—

- (a) to issue coastal protection or coastal access notices and repair and removal notices delegated to the MEC in terms of sections 59 and 60, respectively;
- (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 and giving the MEC a reasonable opportunity to make representations.

Delegation by MECs

91. (1) An MEC may delegate any power or duty assigned or delegated to him or her in terms of this Act to—

- (a) the head of the provincial lead agency; or
- (b) any other organ of state, a statutory functionary, a traditional council or a 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 that the MEC may impose;
- (b) must be in writing;
- (c) may include the power to subdelegate; 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 subdelegation 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 contemplated in subsection (1) 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) and (4) or 60(1), (3) and (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 sufficient information available and accessible to the public 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. 5

(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; 10
- (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. 15

(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 in terms of subsection (2).

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 20
- (b) monitor compliance by such municipalities with this Act.

CHAPTER 12

MISCELLANEOUS MATTERS

25

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 on coastal public property, including a port or harbour, that existed when this Act took effect; or 30
- (b) a vested right to use or exploit any specific coastal resource on or in coastal public property, including a right to prospect for or mine minerals, or to explore for or exploit petroleum resources that existed when this Act took effect. 35

(2) The holder of a lease or right referred to in subsection (1) must within 24 months of the commencement of this Act—

- (a) notify the Minister, in writing, of the existence of that lease or right; and
- (b) provide the Minister with a copy of any documents evidencing that lease or right. 40

(3) A person may undertake any activity authorised by a lease or right referred to in subsection (1) without obtaining a coastal lease or a coastal concession in terms of Chapter 7 for a maximum period of —

- (a) 48 months after the commencement of this Act, if the holder of that lease or right complies with subsection (2); or 45
- (b) 24 months after the commencement of this Act, 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. 50

(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 would have or 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, 1998 (Act No. 19 of 1998), 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, within a reasonable period, as determined by the Minister when refusing the application, as far as reasonably possible restore the site to its condition before the building or other structure was built.

(3) If a person who in terms of subsection (2) is obliged to demolish the building or structure and to restore the site to its original condition, fails to do so within the period specified by the Minister, 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 that 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 environmental authorisation;
- (b) abstracting water from coastal waters,

must be regarded to be the holder of an 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 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, revoke, 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.

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. 5

(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. 10

Part 2

General

Limitation of liability

100. Neither the State nor any other person is liable for any damage or loss caused by— 15

- (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. 20

Short title

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

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.	5
Act No. 73 of 1980	Dumping at Sea Control Act, 1980	Repeal of the whole	10

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")

15

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. 20

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; 25
 - and
 - (c) the feasibility of the following waste reduction or prevention techniques:
 - (i) product reformulation;
 - (ii) clean production technologies;
 - (iii) process modification; 30
 - (iv) input substitution; and
 - (v) on-site, closed-loop recycling.
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. 35
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. 40 45

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; 5
 - (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. 10

CHEMICAL, PHYSICAL AND BIOLOGICAL PROPERTIES

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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. 20
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 25
 - (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, organohalogenes, 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 organohalogenes). An Action List can also be used as a trigger mechanism for further waste prevention considerations. 30 35
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; 40
 - (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 45
 - (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: 50

- (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; 5
- (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. 10
- 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. 15
20
- 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. 25
- 14. Each assessment must conclude with a statement supporting a decision to issue or refuse a permit for dumping at sea. 30

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. 35

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— 40
 - (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. 45
- 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. 50

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT BILL, 2007

1. BACKGROUND

- 1.1 Flowing from the United Nations Conference on Environment and Development (UNCED) in 1992 and the call for coastal states to prioritise coastal management issues, South Africa embarked on a comprehensive participatory and consultative process to develop a national policy for Sustainable Coastal Development in South Africa. The policy was endorsed by Cabinet and published as the *White Paper for Sustainable Coastal Development in South Africa* in April 2000.
- 1.2 Coastal management in South Africa, however, has historically been fragmented and uncoordinated, resulting in environmental degradation and lost economic opportunities. The World Summit on Sustainable Development (WSSD) held in 2002 and the subsequent Johannesburg Plan of Implementation highlighted the need to promote integrated, multidisciplinary and multi-sectoral coastal and ocean management at the national level. The Integrated Coastal Management Bill seeks to facilitate the implementation of the White Paper and to simplify the legislative framework regulating the use of coastal resources.

2. OBJECTS OF BILL

- 2.1 The Bill sets out a new and integrated approach to managing the nation's coastal resources in order to promote social equity and to make best economic use of coastal resources, whilst protecting the natural environment. Specifically, the Bill seeks to:
 - 2.1.1 Provide a legal and administrative framework that will promote cooperative, coordinated and integrated coastal management;
 - 2.1.2 Preserve, protect and enhance the status of the coastal environment as the heritage of all;
 - 2.1.3 Ensure that coastal resources are managed in the interest of the whole community;
 - 2.1.4 Ensure that there is equitable access to the opportunities and benefits derived from the coast; and
 - 2.1.5 Give effect to South Africa's international law obligations.

2.2 FEATURES OF BILL

The Integrated Coastal Management Bill comprises twelve chapters, the main features of which are outlined below.

Chapter 1: Interpretation, objects and application of act

This chapter defines key words and phrases; sets out the objects in order to guide the interpretation and application of the Bill; clarifies the role of the State in relation to the coastal environment, indicates to whom and where the Bill applies, explains that the Bill must be read in conjunction with the National Environmental Management Act and explains how to reconcile conflicts with other legislation.

Chapter 2: The coastal zone

This chapter defines the extent and legal status of the coastal zone and different areas therein. The **coastal zone** is illustrated in Annexure 1. It identifies **coastal public property**, which includes the sea, the beach and state-owned land. The Bill provides for improved protection of, and access to, these public assets.

The Bill also allows for a **coastal protection zone** (100 m in urban areas and 1 000 m in rural areas). This area can be made wider in more sensitive areas and narrower in less sensitive areas.

The Bill requires activities such as developments in these areas to take account of the dynamic nature of the coast and to protect people and property from harm from natural causes such as coastline erosion and flooding, or new threats like sea level rise as a consequence of global warming.

The Bill requires municipalities to designate **coastal access land** (see clause 18) and implores municipalities to include consideration of environmental factors. Clause 23 provides that **special management areas** may be declared and clause 24 deals with the management of such areas in order to give effect to the recognition in the White Paper that the diversity of the coast requires different management approaches in different areas. Clause 25 authorises MEC's to establish **coastal set-back lines**, making it necessary to obtain permission for erecting or altering a structure situated seaward of the line. A coastal set-back line may, for example, be established to ensure that the shadows from high buildings do not fall on the beach or in order to take into account possible effects of sea level rise.

Chapter 3: Boundaries of coastal areas

This chapter provides procedures for demarcating and adjusting the boundaries of coastal public property, the coastal protection zone, special management areas and coastal access land (clauses 26-29). It also sets out the considerations which must apply in respect of such demarcations and adjustments. Interested and affected parties have an opportunity to contribute to the process of demarcating or adjusting coastal boundaries. Provision is made for marking boundaries on zoning maps and endorsements by the Registrar of Deeds (clauses 31 and 32). Reference is made to 'coastal boundaries' throughout this chapter to make a distinction between these boundaries and municipal zoning or other official territorial boundaries, governed by other legislation and processes. Coastal boundaries do not affect existing property rights, provincial, municipal or other legally recognised boundaries.

Chapter 4: Estuaries

This chapter aims to facilitate the efficient and coordinated management of all estuaries by providing that they must be managed in accordance with:

- (a) a **National Estuarine Management Protocol** (see clause 33) approved by the Ministers responsible for the environment and for water affairs; and
- (b) **estuarine management plans** for individual estuaries (see clause 34). The Protocol will provide a national policy for estuary management and guide the development of individual estuarine management plans.

Chapter 5: Institutional arrangements

This chapter establishes a statutory framework for new institutional arrangements to ensure integrated and coordinated coastal management. The Bill provides for the establishment of a **National Coastal Committee** (clause 35), **Provincial Coastal Committees** (clause 39) and **Municipal Coastal Committees** (clause 42) to provide for an integrated approach across all three spheres of government.

Chapter 6: Coastal management

This chapter establishes a system of coastal management programmes within each sphere of government and provides for agreement on:

- a common vision for the coast;
- priorities;
- implementation strategies;
- objectives;
- norms and standards;
- performance indicators.

The current land-use planning system in South Africa is a land-based system that essentially stops at the high water mark. This chapter is designed to extend that system across the land or sea interface in order to allow for

integrated coastal planning and the proactive control of the use of coastal resources (clauses 44-50). It also allows for extensive public consultation (clause 53), in compliance with section 33 of the Constitution and the Promotion of Administrative Justice Act, 2000.

Chapter 7: Protection of coastal resources

This chapter provides measures for protecting the coastal environment from activities that may detrimentally affect it and creates procedures for assessing and regulating such activities. Clause 59 provides for the Minister or MEC to issue written notices requiring measures to be taken to protect the coastal environment (**Coastal protection notices and coastal access notices**). Clause 60 authorises the Minister or MEC to issue notices for the **repair or removal of structures within the coastal zone**. Part 2 (clauses 63) prohibits potentially harmful activities from taking place within the **coastal zone** unless they have been specifically authorised requiring an environmental authorisation before undertaking specified or listed activities within this zone. The Bill does not seek to introduce new environmental impact assessment procedures. It requires environmental impact assessments to consider additional issues such as natural coastal processes, the interests of the whole community and so forth (clause 63). This part of the Bill aims to align the Bill with NEMA and integrate and streamline processes within the Department to ensure that only one authorisation is issued.

Chapter 8: Marine and coastal pollution control

This chapter establishes an integrated regime for regulating the disposal of effluent and waste into estuaries and the sea, including prohibiting incineration at sea and restricting dumping at sea in accordance with international best practice (clauses 69-73).

Chapter 9: Appeals

This chapter sets out the procedures to be followed when appealing against coastal protection or repair and removal notices or in connection with the granting or refusal of an authorisation under the Bill (clause 74-78).

Chapter 10: Enforcement

This chapter establishes certain offences (clause 79), determines penalties in respect of offences (clause 80), and gives the Minister, an MEC or a municipality the power to institute legal proceedings or take other measures in relation to coastal public property or the coastal environment (clause 82).

Chapter 11: General ministerial powers and duties

This chapter sets out the powers and responsibilities of the Minister and the MEC's, including the power to make regulations (clauses 83-85). Clause 92 allows the Minister to take urgent steps 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.

Chapter 12: Miscellaneous matters

This chapter deals with various transitional and other matters that are not addressed elsewhere in the Bill, provides for the repeal of the Sea-shore Act, 1935 (Act No. 21 of 1935), to the extent that it has not been assigned to provinces and the Dumping at Sea Control Act, 1980 (Act No. 73 of 1980).

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- 3.1. The Bill was gazetted on 15 December 2006 and the 90-day public comment period closed on 15 March 2007. The Department held provincial road-shows and also produced a user-friendly guide in four languages (isiXhosa, isiZulu, English and Afrikaans) that are used in the coastal provinces, in an attempt to simplify the contents of the Bill.
- 3.2. During the public participation process, a wide range of stakeholders were consulted, including the following:

- National departments, including the Department of Land Affairs; Department of Agriculture; Department of Housing; Department of Trade and Industry; Department of Water Affairs and Forestry; Department of Transport; Department of Defence; Department of Minerals and Energy; Department of Health; Department of Labour; Department of Public Works; Department of Public Enterprises; Department of Finance
- MINTEC and MINMEC (Environment)
- Statutory bodies, including: Chamber of Mines, Eskom, Ezemvelo KZN Wildlife, South African National Biodiversity Institute (SANBI), South African National Parks (SANParks); Transnet/Portnet
- Provinces
- Local Authorities
- Others: Business and Industry; Consultants; Environmental Groups; Legal Profession; Property Owners Associations; Research Institutions; and members of the general public

4. IMPLICATIONS FOR VULNERABLE GROUPS

Women, children and disabled persons, particularly those from poor communities, are especially vulnerable. Better management of coastal resources can play a significant role in combating poverty and inequity in South Africa.

5. FINANCIAL IMPLICATIONS FOR THE STATE

5.1 Personnel

DEAT undertook a regulatory impact study to assess the financial implications for implementation of the Integrated Coastal Management Bill. This included an assessment of the additional requirements relating to organisational structures and personnel. The study found that many of the obligations imposed by the new legislation could be accommodated within the existing management functionaries across government.

5.2. Financial

The Costing of the ICM Bill study looked at the quantifiable direct implementation costs as well as the indirect impacts of implementing the Bill. Working on a five-year planning horizon (when most of the one-off costs will occur), the direct implementation costs amount to R868 million. After five years these costs will reduce as they relate to the initial costs to set the Bill in motion. The results show that there will be a positive net benefit impact on economic growth and development in implementing the bill (R0.8 to R5.4 billion per annum). The study has found no significant negative impact on economic activities such as mining and real estate, except to exert compliance on conditions for such activities in the coast through the existing environmental legislation (NEMA).

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Environmental Affairs and Tourism are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996. It falls within a functional area listed in Schedule 4 to the Constitution, namely “environment”.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.