

## NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT BILL

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

### PREAMBLE

#### WHEREAS

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

**NOW THEREFORE** it is enacted by the Parliament of the Republic of South Africa, as follows:-

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CHAPTER 1  
INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

1. Definitions

(1) In this Act, unless the context indicates otherwise –

**“admiralty reserve”** means any strip of land parallel to and adjoining the inland side of the high-water mark and which, when this Act took effect, was 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, regardless of who owns the land;

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

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

**“aircraft”** means airborne craft of any type whatsoever, whether self-propelled or not, and includes hovercrafts;

**“authorisation”** means an authorisation under this Act and includes a special permit, a coastal use permit; a coastal waters discharge permit, an incineration or dumping permit issued under section 76, a coastal land lease, a coastal concession and any authorisation that is regarded as being an authorisation under this Act by virtue of section 103 (2);

**“Biodiversity Act”** means the National Environmental Management: Biodiversity Act 2004 (Act 10 of 2004);

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

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

(d) species;

**“coastal access land”** means land –

- (a) designated as coastal access land in terms of section 18 (1), read with section 26; or
- (b) regarded as having been so designated in terms of section 18 (5);

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

**“coastal concession”** means a concession awarded in terms of section 70 read with section 100;

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

**“coastal land lease”** means a lease awarded in terms of section 70 read with section 100;

**“coastal management”** includes –

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

**“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 protected area”** means a protected area that is situated wholly or partially within the coastal zone but does not include a protected area that is not managed by, or on behalf of, an organ of state, and excludes any part of such a protected area that has been excised from the coastal zone in terms of section 22;

**“coastal public property”** means coastal public property as determined in terms of section 7 read with section 26;

**“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 the MEC in accordance with section 25 and delineated on a map that forms part of the zoning scheme of a local municipality and which indicates that restrictions have been imposed on the building, erection, alteration or extension of structures that are wholly or partially seaward of that line;

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

**“coastal waters”** –

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

**“coastal wetland”** –

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

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

**“coastal zoning 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;

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

**“delegation”**, in relation to a duty, includes an instruction to perform the duty;

**“Department”** means the Department of Environmental Affairs and Tourism;

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

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

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

**“dumping at sea”** means –

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

**“dumping permit”** means a permit granted under section 76;

**“effluent”** means any liquid discharged into the environment as waste and without limitation, includes any substance dissolved or suspended in the liquid, and water that has a substantially different chemical composition or temperature from that of the water into which it is discharged;

**“environment”** has the same meaning as in the National Environmental Management Act;

**“environmental authorisation”** means an authorisation granted by a competent authority in terms of Chapter 5 of the National Environmental Management Act, to undertake a listed activity as defined in that Act;

**“environmental impact assessment”** means an assessment that complies with the minimum requirements established by Chapter 5 of the National Environmental Management Act;

**“estuarine management plan”** means a plan for the management of a specific estuary prepared in accordance with section 34;

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

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

**“exclusive economic zone”** means the exclusive economic zone of the Republic as described in the Maritime Zones Act, 1994 (Act 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;

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

**“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, for the purposes of sections 13, 13(2), 21, 53(2), 63(2), 67(3) and (5), 69(1), 74(7) and (8), and 76(2) and (4), the collective interests of the community determined by –

- (a) prioritising the collective interests of all persons living in the Republic in coastal public property

over the interests of a particular group or sector of society;

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

**“issuing authority”**, in relation to authorisations under this Act, means the authority designated by regulations made in terms of section 88 as the issuing authority for those authorisations;

**“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 unit”** means an erf, farm or other area of land defined by cadastral boundaries that is registered in the Deeds Registry as defined in section 103 of the Deeds Registries Act, 1937 (Act 47 of 1937);

**“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 creates or regulates rights to use land;

**“littoral active zone”** means any land forming part of, or adjacent to, the seashore that is –

- (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;

**“living modified organism”** means any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses and viroids, that possesses a novel combination of genetic material obtained through the use or application of either in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (RNA) and direct injection of nucleic acid into cells or organelles, or the fusion of cells beyond the taxonomic family; that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

**“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 periods of ordinary spring tides;

**“Marine Living Resources Act”** means the Marine Living Resources Act, 1998 (Act 18 of 1998);

**“MEC”** means the member of the Executive Council of a coastal province who is responsible for environmental and coastal management in the province;

**“Minister”** means the Cabinet member responsible for national environmental management;

**“municipality”**–

- (a) means a metropolitan, district or local municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act 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 –
  - (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 32 of 2000);

**“National Environmental Management Act”** means the National Environmental Management Act, 1998 (Act 107 of 1998);

**“national estuarine management protocol”** means the national protocol concerning the management of estuaries that is referred to in Chapter 4;

**“National Water Act”** means the National Water Act, 1998 (Act 36 of 1998);

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

board, at sea;

**“organ of state”** has the meaning set out in section 239 of the Constitution of the Republic of South Africa;

**“pollution”** means any change in the environment caused by any substance, radioactive or other waves or noise, odours, dust or heat emitted from any activity, including the storage or treatment of waste or other material, construction or the provision of services, whether engaged in by a person or an organ of state, if that change has or will have an adverse effect –

- (a) on human health or well-being;
- (b) on the composition, resilience or productivity of natural or managed ecosystems; or
- (c) on materials useful to people;

**“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 57 of 2003);

**“provincial lead agency”** means a provincial organ of state designated by the Premier of the province in terms of section 37 as the lead agency for coastal management in the province;

**“sea”** means all marine waters, including –

- (a) the high seas;
- (b) all marine waters under the jurisdiction of any state; and
- (c) the bed and subsoil beneath those waters,

but does not include estuaries;

**“seashore”**, subject to section 26, means –

- (a) all land between the low-water mark and the high-water mark whether or not submerged and including the soil and subsoil;
- (b) the water between the low-water mark and the high-water mark;
- (c) any land reclaimed from coastal waters after the commencement of this Act;
- (d) land referred to in section 14;
- (e) coastal cliffs, from the base to the crest of the cliff, if the base of the cliff is in continuous contact with the sea or tidal waters for an hour or more during each normal spring tide of the year; and

- (f) any area that at the commencement of this Act was part of the sea-shore as defined in the Sea-Shore Act, 1935 (Act 21 of 1935);

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

**“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;

**“special permit”** means a special permit issued under section 63(2);

**“this Act”** includes any regulations made in terms of this Act;

**“traditional authority”** means any authority which in terms of indigenous law or any other law administers the affairs of any tribe or group of indigenous people or any other persons resident within an area under the control of a traditional leader;

**“vessel”** means any 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 transporting anything by water;

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

**“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 that another meaning is intended.

## 2. Objectives of this Act

The objectives of this Act are –

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

- (c) to preserve, protect and enhance the status of coastal public property as being held in trust by the state on behalf of all South Africans, including future generations;
- (d) to secure equitable access to the opportunities and benefits of coastal public property; and
- (e) to give effect to the Republic's obligations in terms of international law regarding coastal management.

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

In fulfilling the rights contained in section 24 of the Constitution, 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.

### **4. Application of this Act**

- (1) This Act applies in the Republic, including –
  - (a) its territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act 15 of 1994); and
  - (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act 43 of 1948).
- (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.
- (3) This Act binds all organs of state –
  - (a) in the national and local spheres of government; and
  - (b) in the provincial sphere of government, subject to section 146 of the Constitution.

### **5. Application of National Environmental Management Act**

- (1) This Act must be read with the National Environmental Management Act.
- (2) This Act must be regarded as a "specific environmental management Act" as defined in section 1 of the 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.

### **6. Conflicts with other legislation**

- (1) If there is a conflict between a section of this Act and other national legislation, the section of this Act prevails, if the conflict concerns coastal zone management.
- (2) A provision contained in this Act, in the National Environmental Management Act, or in regulations made, or an authorisation issued under, either Act, shall prevail 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 103 (1) or (2).

## CHAPTER 2 THE COASTAL ZONE

### *Part 1: Coastal public property*

#### 7. Composition of coastal public property

Coastal public property consists of –

- (a) the coastal waters;
- (b) land submerged by the coastal waters, including –
  - (i) land invaded by coastal waters which subsequently becomes part of the bed of coastal waters; and
  - (ii) the subsoil beneath such land;
- (c) any existing island, and any island that may in the future be created whether naturally or artificially, within the coastal waters, but excluding:
  - (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;
- (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 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
  - (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 the coastal waters;
- (f) any admiralty reserve owned by the state;
- (g) any state owned land declared in terms of section 8 to be coastal public property;
- (h) any natural resources on or in –
  - (i) any coastal public property of a category mentioned in paragraph (a) to (g); or

- (ii) the exclusive economic zone, or in or on the continental shelf, within the meaning of the Maritime Zones Act, 1994 (Act 15 of 1994);
- (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.

## **8. Extending coastal public property**

- (1) The Minister may, by notice in the *Gazette*, declare any state owned land as coastal public property in order –
  - (a) to improve public access to the seashore;
  - (b) to protect sensitive coastal ecosystems;
  - (c) to secure the natural functioning of dynamic coastal processes; or
  - (d) to facilitate the achievement of any of the objectives of this Act.
- (2) State owned land may be declared as coastal public property only if the land –
  - (a) is adjacent to existing coastal public property; or
  - (b) forms part of the littoral active zone.
- (3) Before declaring state owned land as coastal public property in terms of subsection (1), the Minister must –
  - (a) consult with interested and affected parties; and
  - (b) obtain the concurrence of the Cabinet member, or of the member of the Executive Council of the province, responsible for managing that state owned land.
- (4) 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 prior approval of Parliament.
- (5) This section does not affect the application of section 26.

## **9. Acquisition of private land by the state**

- (1) The Minister, acting with the concurrence of the Cabinet member responsible for the administration of state land, may acquire private land for the purpose of declaring that land as coastal public property, by –
  - (a) purchasing the land;
  - (b) exchanging the land for other land; or
  - (c) if no agreement is reached with the owner, by expropriating the land in accordance with the Expropriation Act, 1975 (Act 63 of 1975).

- (2) Land may be acquired in terms of this section only if it –
  - (a) meets the criteria specified in section 8(2)(a) or (b); and
  - (b) is being expropriated for a purpose set out in section 8(1)(a) to (d).

#### **10. Designation of state owned land for certain purposes**

- (1) The Minister may, by notice in the *Gazette* –
  - (a) designate state owned land vested in the national government for the purpose of facilitating any of the matters mentioned in section 8(1)(a) to (d); or
  - (b) at any time withdraw a designation in terms of paragraph (a).
  
- (2) Before designating state owned land in terms of subsection (1)(a) or withdrawing a designation in terms of subsection (1)(b) the Minister must –
  - (a) consult the MEC of the province concerned;
  - (b) consult the persons responsible for managing the state owned land; and
  - (c) obtain the concurrence of the Cabinet member responsible for managing that state owned land.
  
- (3) The MEC may, by notice in the *Gazette* –
  - (a) designate state owned land vested in the provincial government for the purpose of facilitating any of the matters mentioned in section 8(1)(a) to (d); or
  - (b) at any time withdraw a designation in terms of paragraph (a).
  
- (4) Before designating state owned land in terms of subsection (3)(a) or withdrawing a designation in terms of subsection (3)(b) the MEC must –
  - (a) consult the Minister;
  - (b) consult the persons responsible for managing the state owned land; and
  - (c) obtain the concurrence of the member of the Executive Council responsible for managing that state owned land.
  
- (5) State owned land designated in terms of subsection (1)(a) or subsection (3)(a) must be regarded as coastal public property.

#### **11. Ownership of coastal public property**

- (1) The ownership of coastal public property vests in the citizens of the Republic and coastal public

property must be held in trust by the state on behalf of the citizens of the Republic.

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

## **12. State public trustee of coastal public property**

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.

## **13. Access to coastal public property**

(1) Subject to this Act and any other applicable legislation, any natural person in the Republic –

- (a) has a right of reasonable access to coastal public property; and
- (b) shall be entitled to use and enjoy coastal public property, provided such use –
  - (i) does not adversely affect the rights of members of the public to use and enjoy the coastal public property;
  - (ii) does not prejudice the performance by the state of its duty to protect the environment; and
  - (iii) does not cause an adverse effect.

(2) This section does not prevent prohibitions or restrictions on access to, or the use of, any part of coastal public property –

- (a) which is or forms part of a protected area;
- (b) to protect the environment, including biodiversity;
- (c) in the interests of the whole community;
- (d) in the interests of national security; or
- (d) in the national interest.

(3) No fee may be charged for access to coastal public property without the approval of the Minister.

(4) The Minister, before granting approval for the imposition of a fee, must undertake a public participation process in accordance with Part 5 of Chapter 6 to enable interested and affected parties to make representations.

(5) Subsections (3) and (4) do not apply to coastal public property –

- (a) that has been leased; or
- (b) that is, or forms part of, a protected area.

#### **14. Changes in position of high-water mark**

- (1) If the high-water mark moves inland due to the erosion of the coast, sea-level rise or other natural causes, the owner of land situated inland of the high-water mark –
  - (a) loses ownership of any portion of that land that becomes situated below the high-water mark; and
  - (b) is not entitled to compensation.
  
- (2) 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 part of the seashore, and does not become part of any adjoining property that has a boundary extending to, or to a stated distance from, the high-water mark.

#### **15. Measures affecting erosion and accretion**

- (1) The owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion may not require any organ of state or any other person to take measures to prevent the erosion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is a reasonably foreseeable consequence of an action by that organ of state or other person.
  
- (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.

### *Part 2: Coastal buffer zone*

#### **16. Composition of coastal buffer zone**

- (1) Subject to subsection (2), the coastal buffer zone consists of –
  - (a) land falling within an area declared in terms of the Environment Conservation Act, 1989 (Act 73 of 1989) as a sensitive coastal area within which activities identified in terms of section 17(1) of that Act may not be undertaken without an authorisation;
  - (b) any part of the littoral active zone that is not coastal public property;
  - (c) any coastal protected area, or part of such area, which is not coastal public property;
  - (d) any land which –
    - (i) when this Act took effect, was part of a land unit that was zoned under a land development

plan for residential, commercial, industrial or multiple-use purposes; and

- (ii) is situated within 100 metres inland from the high-water mark;
  - (e) any land which –
    - (i) when this Act took effect, was part of a land unit that was not zoned under a land development plan for residential, commercial, industrial or multiple-use purposes; and
    - (ii) is situated within one kilometre inland from the inland boundary of coastal public property;
  - (f) any coastal wetland, lake, lagoon or dam which is situated wholly or partially within a land unit referred to in paragraph (d)(i) or (e)(i);
  - (g) any part of the seashore which is not coastal public property, including all privately owned land below the high water mark; or
  - (h) any admiralty reserve which is not coastal public property.
- (2) An area forming part of the coastal buffer zone, except an area referred to in subsection (1) (g) or (h), may be excised from the coastal buffer zone in terms of section 26.

#### 17. Purpose of coastal buffer zone

The coastal buffer zone is established for the purpose of enabling the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted in order –

- (a) to protect the ecological integrity, natural character and the economic, social and aesthetic value, of coastal public property;
- (b) to avoid increasing the incidence or severity of natural hazards in the coastal zone;
- (c) to protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise;
- (d) to maintain the natural functioning of the littoral active zone;
- (e) to maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
- (f) to make land near the seashore available to organs of state and other authorised persons for –
  - (i) performing rescue operations; or
  - (ii) temporarily depositing objects and materials washed up by the sea or tidal waters.

### *Part 3: Coastal access land*

#### 18. Designation of coastal access land

- (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 adjacent to that coastal public property as coastal access land in order to secure public access to that coastal public property.

- (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 shall 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.
- (4) No land within a harbour, defence or other strategic facility may be designated as coastal access land without the consent of the Cabinet member responsible for that facility.
- (5) Until strips of land have been designated as coastal access land in a particular municipal area, the following land must be regarded as having been so designated –
  - (a) any public right of way, municipal servitude or other land which the public were entitled to use to gain access to public coastal property when this Act commenced; and
  - (b) any place which, for at least five years immediately prior to the commencement of this Act, had been used by the public to gain access to public coastal property, including access to boat launching sites and proclaimed fishing harbours.
  - (6) A municipality may, on its own initiative or in response to a request from an organ of state or any other interested and affect party, withdraw the designation of any land as coastal access land.

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

- (1) A municipality may withdraw the designation of any land as coastal access land by following the same procedure as is required to designate land as coastal access land.
- (2) Before designating land as coastal access land or withdrawing any such designation, a municipality must –
  - (a) assess the potential environmental impacts of doing so;
  - (b) consult with interested and affected parties in accordance with Part 5 of Chapter 6; and
  - (c) give notice of the intended designation or withdrawal of the designation to the owner of the land.

**20. Responsibilities of municipalities with regard to coastal access land**

- (1) A municipality in whose area coastal access land falls must –
- (a) signpost entry points to that coastal access land;
  - (b) control the use of, and activities on, that land;
  - (c) protect and enforce the rights of the public to use that land to gain access to coastal public property;
  - (d) maintain that land so as to ensure that the public has access to the relevant coastal public property;
  - (e) where appropriate and within its available resources, provide facilities that promote access to coastal public property, including parking areas, toilets, boardwalks and other amenities, taking into account the needs of persons with physical disabilities;
  - (f) ensure that the provision and use of coastal access land and associated infrastructure do not cause adverse effects;
  - (g) remove any public access servitude that is causing or contributing to adverse effects that the municipality is unable to prevent or to mitigate adequately;
  - (h) report to the MEC within two years of this Act coming into force on the measures taken to implement this section;
  - (i) describe or otherwise indicate all coastal access land in any municipal coastal management programme and in any municipal spatial development framework prepared in terms of the Municipal Systems Act; and
  - (j) perform any other actions that may be prescribed.
- (2) A municipality may make by-laws for the proper implementation of subsection (1).

***Part 4: Coastal waters***

**21. Control and management of coastal waters**

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***

**22. Excision of protected areas from coastal buffer zone**

- (1) Subject to section 92, the MEC may by notice in the *Gazette* declare that with effect from a specified date the whole or any part of a protected area, that is not coastal public property, will not form part of the coastal buffer zone.
- (2) The MEC may only publish a notice referred to in subsection (1) if he or she reasonably believes that doing so will not prejudice the effective management of the coastal zone.

***Part 6: Special management areas***

**23. Declaration of special management areas**

- (1) Subject to section 92, the MEC may, and after consultation with the Minister, 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
  - (b) withdraw or amend any declaration in terms of paragraph (a).
- (2) Before declaring an area to be a special management area, the MEC 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 in the opinion of the MEC, are necessary in order to more effectively–
  - (a) attain the objectives of any coastal management programme in the area;
  - (b) facilitate the management of coastal resources by a local community;
  - (c) promote sustainable livelihoods for a local community; or
  - (d) conserve, protect or enhance coastal ecosystems and biodiversity in the area.

**24. Management of special management areas**

- (1) The MEC must 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 –
  - (a) a juristic person constituted for that purpose;

- (b) an organ of state;
  - (c) a traditional authority; or
  - (d) any other person with appropriate expertise and capacity.
- (3) Before authorising the manager to begin managing the special management area, the MEC must make regulations that –
- (a) define the duties and powers of the manager; and
  - (b) prescribe rules to facilitate the achievement of the objectives for which the special management area was declared.
- (4) The MEC may not make regulations for the management of a special management area that conflict with any regulations applicable to the management of a protected area within the special management area.

#### *Part 7: Coastal set-back lines*

#### **25. Establishment of coastal set-back lines**

- (1) An MEC may in regulations published in the *Gazette* -
- (a) establish or change a coastal set-back line –
    - (i) to protect coastal public property;
    - (ii) to protect the coastal buffer zone;
    - (iii) to preserve the aesthetic values of the coastal zone; or
    - (iv) for any other reason consistent with the objectives of this Act; and
  - (b) prohibit or restrict the building, erection, alteration or extension of structures that are wholly or partially seaward of that coastal set-back line.
- (2) Before making or amending the regulations 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
  - (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 immediately 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.

- (4) A coastal set-back line may be situated wholly or partially outside the coastal zone.

### CHAPTER 3 BOUNDARIES OF COASTAL AREAS

#### 26. Determination and adjustment of boundaries

- (1) The boundaries of –
- (a) coastal public property may be determined or adjusted by the Minister in accordance with sections 27 by notice in the *Gazette*;
  - (b) the coastal buffer zone may be determined or adjusted by the MEC in accordance with section 28 by notice in the *Gazette*;
  - (a) a coastal management area may be determined or adjusted by the MEC in accordance with sections 23 by notice in the *Gazette*;
  - (c) coastal access land may be determined or adjusted by the municipality in accordance with sections 29 by notice in the *Gazette*.
- (2) The power of the Minister to determine or adjust the inland boundary of coastal public property includes the power to make any consequential change to an adjoining boundary of the coastal buffer zone or coastal access land.
- (3) The boundaries referred to in subsection (1) may only be determined or adjusted if, either:
- (a) that boundary –
    - (i) is uncertain or undefined;
    - (ii) is subject to disputing claims; or
    - (iii) has shifted due to natural or artificial processes; or
  - (b) the Minister, MEC or municipality concerned reasonably believes that the objectives of this Act will be achieved more effectively by doing so.
- (4) When determining or adjusting a boundary the Minister, MEC or municipality in question must –
- (a) give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6;
  - (b) take into account –
    - (i) any representations made by interested and affected parties;
    - (ii) the interests of any affected local community;
    - (iii) any applicable coastal management programme, and

- (c) comply with any other requirements that may be prescribed.
- (5) If the Minister or MEC determines or adjusts any boundary under this section, he or she must immediately inform any municipality within whose area of jurisdiction the boundary is situated to enable the municipality to reflect that boundary on its zoning maps in accordance with section 31.

#### **27. Determining and adjusting boundary of coastal public property**

When determining or adjusting the inland boundary of coastal public property, the Minister must take into account –

- (a) the dynamic nature of the shoreline;
- (b) the need to make 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 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.

#### **28. Determining and adjusting boundaries of coastal buffer zone**

- (1) The MEC may not determine or adjust the boundaries of the coastal buffer zone in a manner that changes the boundaries of coastal public property.
- (2) The MEC may include land that is not adjacent to coastal public property in the coastal buffer zone.
- (3) When determining or adjusting the boundary of the coastal buffer zone the MEC must take into account –
  - (a) the purpose for which the coastal buffer zone is established;
  - (b) the importance for coastal management to incorporate into the coastal buffer 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 boundary of coastal public property by demarcating a continuous strip of land adjacent to it; and
- (g) any other factor that may be prescribed.

### **29. Determining and adjusting boundaries of coastal access land**

When determining or adjusting a boundary of coastal access land a municipality must take into account –

- (a) the kind of public access required, and whether it is for –
  - (i) pedestrians;
  - (ii) vessel launching; or
  - (iii) 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;
- (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.

### **30. Entry onto land**

The Minister, an MEC or a municipality may for the purpose of determining or adjusting a boundary in terms of section 26, authorise any person to enter at any reasonable time any land or premises, other than residential premises, without a warrant, to –

- (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.

**31. Marking boundaries on zoning maps**

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

**32. Endorsements by Registrar of Deeds**

- (1) The Minister, the MEC or a municipality, as may be appropriate, must notify the Registrar of Deeds in writing, whenever a 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) or section 26(3).
- (2) The notification to the Registrar of Deeds must –
  - (a) include a description of the land involved; or
  - (b) be accompanied by a diagram of the land involved which is signed by a land surveyor.
- (3) On receipt of the notification, the Registrar of Deeds must make the applicable endorsements on all deeds and other records that may be affected by the determination or adjustment of a boundary or a demarcation.

## CHAPTER 4 ESTUARIES

**33. National estuarine management protocol**

- (1) Estuaries within the Republic must be managed in a co-ordinated and efficient manner in and in accordance with a national estuarine management protocol.
- (2) The Minister, with the concurrence of the member of the Cabinet responsible for water affairs, must within four years of the commencement of this Act, prescribe the national estuarine management protocol.
- (3) The national estuarine management protocol must -
  - (a) determine a strategic vision and objectives for achieving effective integrated management of estuaries;
  - (b) set standards for the management of estuaries;

- (c) establish procedures or give guidance regarding how estuaries must be managed and how the management responsibilities are to be exercised by different organs of state and other parties;
- (d) establish minimum requirements for estuarine management plans;
- (e) identify who must prepare estuarine management plans and the process to be followed in doing so; and
- (f) specify the process for reviewing estuarine management plans to ensure that they comply with the requirements of this Act.

#### **34. Estuarine management plans**

- (1) Any person who develops an estuarine management plan for an estuary must –
  - (a) follow a public participation process in accordance with Part 5 of Chapter 6; and
  - (b) ensure that the estuarine management plan and the process by which it is developed are consistent with –
    - (i) the national estuarine management protocol; and
    - (ii) the national coastal management programme and with the applicable provincial coastal management programme and municipal coastal management programme referred to in Parts 1, 2 and 3 of Chapter 6.
- (2) An estuarine management plan may form an integral part of a provincial coastal management programme or a municipal coastal management programme.

## **CHAPTER 5 INSTITUTIONAL ARRANGEMENTS**

### *Part 1: National Coastal Committee*

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

- (1) The Minister may by notice in the *Gazette* establish a National Coastal Committee and determine its powers.
- (2) The Department must provide administrative support to the National Coastal Committee.
- (3) The National Coastal Committee must promote integrated coastal management in the Republic and effective co-operative governance by co-ordinating the effective implementation of this Act and of the national coastal management programme, and in particular must –
  - (a) promote integrated coastal management –

- (i) within each sphere of government;
  - (ii) between different spheres of government; and
  - (iii) between organs of state and other parties concerned with coastal management;
- (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;
  - (ii) national, provincial and municipal development policies, plans and strategies;
  - (iii) other plans, programmes and policies of organs of state whose activities may create adverse effects on the coastal environment; and
- (c) perform any function delegated to it.

### **36. Composition of National Coastal Committee**

- (1) The Minister shall appoint the members of the National Coastal Committee.
- (2) The Minister must appoint persons to the National Coastal Committee who by virtue of the office that they hold or their expertise can assist the National Coastal Committee in fulfilling its functions and must ensure that the National Coastal Committee includes –
- (a) persons with expertise in fields relevant to coastal management;
  - (b) a representative from each coastal province;
  - (c) one or more members representing municipalities in the coastal zone; and
  - (d) representatives of national government departments who play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment, including representatives of the Department of Minerals and Energy, the Department of Transport, the Department of Public Works, the Department of Land Affairs, the Department of Water Affairs and Forestry and the Department of Trade and Industries.
- (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.
- (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.

*Part 2: Provincial lead agencies*

**37. Designation and functions of provincial lead agency**

- (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.
- (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;
  - (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 objectives 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;
  - (d) co-ordinate the preparation of a provincial state of the coast report required by section 97(2);
  - (e) provide logistical and administrative support to the Provincial Coastal Committee established in accordance with section 38;
  - (f) review environmental impact assessment reports and strategic environmental assessments reports that relate to boundary demarcations under Chapter 4 or that concern projects or policies that may impact on the coastal zone;
  - (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;
  - (h) take all reasonably practical measures to monitor compliance with, and enforce this Act, either alone or in co-operation with other enforcement agencies; and
  - (i) perform any other functions assigned to it by the Minister or the MEC under this Act.
- (2) 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*

**38. Establishment and functions of Provincial Coastal Committees**

- (1) Each MEC must within twelve 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;
- (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;
- (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; and
- (f) perform any function delegated to it.

### **39. Composition of Provincial Coastal Committees**

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

- (5) The Director-General may appoint a member of the Department to participate as a non-voting member of a Provincial Coastal Committee and may appoint an alternate or replacement for any such member.

*Part 4: Voluntary Coastal Officers*

**40. Voluntary coastal officers**

- (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 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 their letter of appointment; and
  - (c) issue each voluntary coastal officer with an identify card that confirms their 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 public.

**CHAPTER 6  
COASTAL MANAGEMENT**

*Part 1: National coastal management programme*

**41. Preparation and adoption of national coastal management programme**

- (1) The Minister –
- (a) must within six years after this Act takes effect, prepare and adopt a national coastal management programme for managing the coastal zone;
  - (b) must review the programme at least once every five years; and
  - (c) may, when necessary, amend the programme.
- (2) The Minister must, within 60 days of the adoption of the national coastal management programme or of any substantial amendment to it –

- (a) give notice 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.

#### **42. Contents of national coastal management programme**

- (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.
- (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;
  - (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;
  - (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 –
    - (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 livelihoods; and
    - (ii) facilitates co-ordinated and integrated coastal management.

#### **43. Identification of provincial and municipal roles in coastal management**

- (1) The Minister must, within 12 months of the commencement of this Act by notice in the *Gazette*, identify the coastal management roles and responsibilities of the coastal provinces, coastal municipalities and other organs of state.
- (2) Before issuing the notice referred to in subsection (1), the Minister must consult with the authorities identified in the notice.

*Part 2: Provincial coastal management programmes*

**44. Preparation and adoption of provincial coastal management programme**

- (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;
  - (b) must review the programme at least once every five years; and
  - (c) may, when necessary, amend the programme.
  
- (2) 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 –
    - (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.
  
- (3) 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.

**45. Contents of provincial coastal management programmes**

- (1) A provincial coastal management programme must –
  - (a) be a provincial policy directive for the management of the coastal zone in the province;
  - (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
    - (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;
  - (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;
  - (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.

### *Part 3: Municipal coastal management programmes*

#### **46. Preparation and adoption of municipal coastal management programmes**

- (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;
  - (b) must review any programme adopted by it at least once every five years; and
  - (c) may, when necessary, amend the programme.
- (2) A municipality must, within 60 days of the adoption of the municipal coastal management programme or of any substantial amendment to it –
- (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.
- (3) 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 compliance with public participation requirements in terms of this Act.

#### 47. Contents of municipal coastal management programmes

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

#### 48. By-laws

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.

#### *Part 4: Co-ordination and alignment of plans and coastal management programmes*

#### 49. Alignment of certain plans with coastal management programmes

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 –

- (a) be aligned with the national coastal management programme and any applicable provincial coastal management programme;
- (b) contain those provisions of the national coastal management programme and any applicable provincial coastal management programme that specifically applies to it; and
- (c) give effect to the national coastal management programme and any applicable provincial coastal management programme.

**50. Ensuring consistency between coastal management programmes and other statutory plans**

- (1) For the purposes of this section "statutory plan" means a plan, policy or programme adopted by an organ of state and that may affect coastal management, and without limitation, may include –
  - (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;
  - (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.
- (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.
- (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.
- (6) 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) for ensuring 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.
- (7) Conflicts between a coastal management programme and other statutory plans must be resolved in a

manner that best promotes the objects of this Act.

- (7) Once the person responsible under subsections (2), (3) or (4) for ensuring consistency has agreed with the organs of state that is responsible for a statutory plan that is in conflict with the relevant coastal management programme on how best to resolve a conflict, they must make appropriate amendments to one or more of the conflicting plans in order to eliminate or resolve the conflict.

### *Part 5: Public participation*

#### **51. Consultative processes**

- (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 –
- (a) consult with interested and affected parties by means of a fair consultative process that enables them to participate effectively in the decision-making process; and
  - (b) take account of the representations and objections received during the consultative process before exercising the power.
- (2) For the purposes of subsection (1) any national, provincial or municipal organ of state whose area of responsibility may be significantly affected by the exercise of the power must be regarded as interested and affected parties.
- (3) A person exercising a power referred to in subsection (1) may -
- (a) require interested and affected parties to register as such in order to participate in a decision-making process provided that the registration requirement does not unfairly prejudice or exclude any group of interested and affected parties; and
  - (b) allow an interested or affected parties to make oral representations or objections in order to enable them to participate more effectively in the decision-making process.
- (4) If a person exercising a power referred to in subsection (1) consults interested and affected parties by way of a notice and comment procedure, the notice must, unless otherwise prescribed -
- (a) be published or broadcast in a manner that is reasonably likely to bring it to the attention of interested and affected parties, including if necessary, by publishing or broadcasting it in more than one official language and in more than one form of media;
  - (b) contain sufficient information to enable interested and affected parties to make meaningful representation or objections, and if appropriate, state where to obtain further information; and
  - (c) explain how interested and affected parties may make representations and participate in the

decision-making process.

## **52. Commenting and provision of information**

- (1) A decision-maker that believes that it does not have sufficient information to make a decision that it is required by this Act to make, may at any time within the period allowed for making the decision, in writing request an organ of state, a person making an application under this Act, or any interested and affected party, to provide information or to comment within a specified period.
- (2) A decision-maker may regard any person who does not provide the information requested or comment within the period specified in terms of subsection (1) as not having any comment to make or information to furnish.
- (3) A decision-maker may –
  - (a) grant a person an extension of time within which to provide information or comment; and
  - (b) consider information or comments provided after any specified period, whether or not an extension was granted, if it is satisfied that there are exceptional circumstances that justify doing so.

### *Part 6: Review of coastal management programmes*

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

- (1) The Minister may at any time review any provincial coastal management programme.
- (2) The Minister must, in reviewing the coastal management programme, determine whether or not it -
  - (a) meets the requirements specified in section 45 ;
  - (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 based on the coastal management principles.
- (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 in order to meet the requirements stipulated in sub-section (2) within a reasonable period, which must be specified in the notice.
- (4) An MEC who receives a notice in terms of subsection (3) must amend or replace the coastal

management programme by following the same procedure used to prepare and approve it under this Act except that the new or amended coastal management programme may not be finally approved without the consent of the Minister.

- (5) The Minister may request an MEC to review a municipal coastal management programme under section 54, and if the MEC is unable or unwilling to do so within a reasonable period the Minister may do so and section 54 will apply with necessary modifications to a review by the Minister.

#### **54. Review of municipal coastal management programmes**

- (1) The MEC may at any time review a municipal coastal management programme.
- (2) The MEC must, in reviewing the coastal management programme, determine whether or not it-
- (a) complies with, and gives effect to the objectives of this Act;
  - (b) is consistent with the national coastal management programme and the provincial coastal management programme;
  - (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 provincial coastal management programme does not meet all the criteria referred to in subsection (2), the MEC must by notice to the municipality concerned, require the municipality to amend or replace the municipal coastal management programme in order to meet the requirements of the MEC within a reasonable period, which must be specified in the notice.
- (4) A municipality that receives a notice in terms of subsection (3) must amend or replace the coastal management programme by following the same procedure used to prepare and approve it under this Act except that the new or amended coastal management programme may not be finally approved without the consent of the MEC.

### *Part 6: Coastal zoning schemes*

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

- (1) A coastal zoning scheme must –
- (a) be established by notice in the *Gazette* ;
  - (b) be consistent with –

- (i) this Act;
  - (ii) the national coastal management programme;
  - (iii) the applicable provincial coastal management programme;
  - (iv) any estuarine management plan applicable in the area; and
- (c) take into account any other applicable coastal management programmes.
- (2) A coastal zoning 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 zoning scheme applies, if the zoning scheme –
    - (i) applies to 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) applies to 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 zoning scheme only applies within that protected area;
  - (c) the MEC, after consultation with the Minister and with any authority that is responsible for managing an area to which the zoning scheme applies, if the zoning scheme is not one referred to in paragraphs (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 zoning scheme applies, if the zoning 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 zoning scheme only applies within that management area.
- (3) A coastal zoning scheme established by –
- (a) the Minister takes precedence over any other coastal zoning 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 zoning scheme except one established by the Minister;
  - (c) an MEC takes precedence over any other coastal zoning 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 zoning 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.
- (4) A coastal zoning 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
  - (b) the Cabinet member responsible for merchant shipping, if the scheme –
    - (i) affects the navigation of vessels on the sea; or
    - (ii) restricts vessels entering or leaving a harbour.
- (5) A coastal zoning scheme may not create any rights to use land or coastal waters.

#### **56. Coastal zoning and land use schemes of municipalities**

- (1) Subject to section 55(5), a coastal zoning scheme of a municipality may form, and be enforced as part of, any land use scheme adopted by the municipality.
- (2) A municipality must not adopt a land use scheme that is inconsistent with a coastal zoning scheme made in terms of this Act and if there is a conflict between a municipal land use scheme established after the commencement of this Act and a coastal zoning scheme made in terms of this Act, the coastal zoning scheme shall prevail.

### **CHAPTER 7**

#### **PROTECTION OF COASTAL RESOURCES**

##### *Part 1: Assessing, avoiding and minimising adverse effects*

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

- (1) Section 28 of the National Environmental Management Act applies, subject to any necessary changes, to any impact caused by any person on the coastal environment and that has an adverse effect on the coastal environment and for the purpose of such application a reference in section 28 to –
  - (a) “significant pollution or degradation of the environment”, must be read as including an adverse effect on the coastal environment;
  - (b) “environment” must be read as including the coastal environment; and
  - (c) “environmental management plan” must be read as including a coastal management programme applicable in the area concerned.
- (2) For the purposes of subsection (1) –

- (a) the Minister may, by notice in the *Gazette*, determine that an impact or activity described in the notice must be presumed, until the contrary is proved, to result in an adverse effect; and
- (b) the persons to whom section 28 (1) and (2) of the National Environmental Management Act applies must be regarded as including –
  - (i) a user of coastal public property;
  - (ii) the owner, occupier, person in control of, or user of land or premises on which an activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
  - (iii) the owner or person in charge of a vessel, aircraft or platform or structure at sea, or the owner or driver of a vehicle, in respect of which any activity that caused or is likely to cause an adverse effect occurred, is occurring or is planned;
  - (iv) the operator of a pipeline that ends in the coastal zone; or
  - (v) any person who produced a substance which caused, is causing or is likely to cause an adverse effect.

#### **58. Authorisation of activities causing adverse effects**

- (1) An organ of State that is empowered by any law to authorise or grant consent for any activity within the Republic that may cause an adverse effect on the coastal environment shall not grant such an authorisation or consent unless he or she has investigated the matter thoroughly and is satisfied that –
  - (a) the activity –
    - (i) is unlikely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
    - (ii) will not substantially prejudice the achievement of any objective set out in the national coastal management programme or any applicable provincial coastal management programme or municipal coastal management programme; and
  - (b) the terms and conditions on which any such authorisation or consent are issued are consistent with the attainment of the relevant coastal management objectives.
- (2) Before granting an authorisation or consent referred to in subsection (1), the organ of State concerned must undertake a public participation process in accordance with Part 5 of Chapter 6.

#### **59. Measures to stop or mitigate adverse effects**

- (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 –
  - (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
  - (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.
  
- (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.
  
- (3) The power of the Minister to issue a coastal protection notice in terms of subsection (1) is delegated to the MEC but may be exercised by the Minister in accordance with section 96.
  
- (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
    - (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;
    - (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;
    - (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.

**60. Repair or removal of structures within the coastal zone**

- (1) The MEC or the Minister, may issue a written repair and removal notice to any person responsible for a structure on or within the coastal zone if that structure -
  - (a) is having or is likely to have an adverse effect on the coastal environment, by virtue of its existence, because of its condition, or because it has been abandoned; or
  - (b) has been erected, constructed or upgraded in contravention of any law including this Act.
  
- (2) Before exercising a power to issue a repair and removal notice under subsection (1), the Minister or MEC must-
  - (a) consult with any other organ of state that authorised or is competent to authorise, the undertaking of the activity or proposed activity concerned; and
  - (b) give the person to whom the coastal protection notice is to be addressed an opportunity of making representations.
  
- (3) The power of the Minister to issue a repair and removal notice in terms of subsection (1) is delegated to the MEC but may be exercised by the Minister in accordance with section 96.
  
- (4) A repair and removal notice in terms of subsection (1) –
  - (a) must state:
    - (i) the reasons for the notice; and
    - (ii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9; and
  - (b) may instruct the person responsible for the structure:
    - (i) to remove the structure from the coastal zone or place where it is situated within a specified period;
    - (ii) to rehabilitate the site and as far as is reasonable, to restore it to a natural state;
    - (iii) to repair the structure to the satisfaction of the Minister, MEC or municipality within the time stated in the notice; or
    - (iv) to take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure.
  
- (5) If a person responsible for a structure referred to in subsection (1) cannot be found readily, instead of issuing a notice in accordance with subsection (4), the MEC or the Minister may –

- (a) publish a notice that complies with the provisions of subsection (3) once in the *Gazette* and once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and
- (b) affix a copy of the notice to the structure in question during the period of advertisement.

#### **61. Failure to comply with certain notices**

If a person fails to comply with a notice issued in terms of section 59(1) 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 MEC or the Minister who issued the notice may instruct appropriate persons to –

- (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.

### *Part 2: Regulation of coastal buffer zone*

#### **62. Implementation of land use legislation in coastal buffer zone**

- (1) An organ of state that is responsible for implementing national, provincial and municipal legislation that regulates the planning or development of land must apply that legislation in relation to land in the coastal buffer zone in a way that gives effect to the purposes for which the buffer zone is established as set out in section 17.
- (2) An organ of state may not authorise land within the coastal buffer zone to be used for any activity that may have an adverse effect on the coastal environment without first considering an environmental impact assessment report.

#### **63. Activities that are prohibited in the coastal buffer zone except in exceptional circumstances**

- (1) Subject to subsection (2) and section 101, the activities listed in Part A of Schedule 3 are prohibited within the coastal buffer zone.
- (2) The Minister may grant an applicant a special permit to carry out an activity mentioned in subsection (1) in a specific area, if –
  - (a) the socio-economic benefits of the activity outweigh the potential adverse effects on the coastal environment; and

- (b) the activity would be in the interests of the whole community.
- (3) Before granting a special permit in terms of subsection (2), the Minister must –
- (a) consider an environmental impact assessment report on the proposed activity; and
  - (b) consult with interested and affected parties.
- (4) A special permit must be subject to appropriate conditions to minimise any adverse effects on the coastal environment.

**64. Activities in coastal buffer zone that require a permit**

- (1) Subject to subsection (2), no person may undertake an activity listed in Part B of Schedule 3 or a development that involves such an activity, within the coastal buffer zone except under and in accordance with a coastal use permit.
- (2) Subsection (1) does not apply to an activity or a development –
- (a) that is authorised in terms of a special permit issued under section 63 (2); or
  - (b) that has been exempted from the provisions of this section in regulations prescribed by the Minister.

***Part 3: Regulation of activities within coastal public property and exclusive economic zone***

**65. Activities within coastal public property and exclusive economic zone that require a permit**

- (1) Subject to subsection (2), no person may undertake on coastal public property or within the exclusive economic zone an activity listed in Part C of Schedule 3, or a development that involves such an activity, except under and in accordance with, a coastal use permit.
- (2) Subsection (1) does not apply to an activity or a development carried out on coastal public property or within the exclusive economic zone if that activity or development –
- (a) is expressly authorised by a provincial or municipal coastal management programme applicable in the area; or
  - (b) has been exempted from the provisions of this section in terms of –
    - (i) a regulation; or
    - (ii) a provincial or municipal coastal management programme applicable in the area.

**66. Prohibition of controlled commercial activities without permit**

- (1) The Minister may, by notice in the *Gazette*, declare any activity that takes place partially or wholly

within coastal public property or the exclusive economic zone and that involves the charging of any person for experiencing or using any aspect of the environment, to be a controlled commercial activity.

- (2) No person may carry out a controlled commercial activity except under and in accordance with a coastal use permit.

### *Part 3: Permits*

#### **67. Issuing of permits**

- (1) An application for a coastal use permit must be made to the issuing authority designated in regulations prescribed by the Minister.
- (2) Before deciding whether or not to issue a coastal use permit the issuing authority must consider a report that assesses the environmental, heritage and socio-economic impacts of the proposed activity and its implications in relation to the factors listed in subsection (3)(a) to (e) inclusive.
- (3) When deciding an application for a coastal use permit, the issuing authority must take into account all relevant factors, including –
- (a) the representations made by the applicant and by interested and affected parties;
  - (b) the interests of the whole community;
  - (c) the coastal management programmes and coastal management objectives applicable in the area;
  - (d) the socio-economic impact if the activity is authorised and if it is not; and
  - (e) the likely impact of the proposed activity on the coastal environment.
- (4) The issuing authority may only authorise an activity or a development within the buffer zone that is likely to have an adverse effect on the coastal environment or that is inconsistent with the purpose for which a buffer zone is established as set out in section 17 if –
- (a) the very nature of the proposed activity or development requires it to be located within the coastal buffer zone; or
  - (b) the proposed activity or development will provide services necessary or convenient for the public when using coastal public property or a coastal protected area.
- (5) The issuing authority must not issue a coastal use permit if –
- (a) the development or activity for which authorisation is sought –
    - (i) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;

- (ii) would substantially prejudice the achievement of any coastal management objective; or
    - (iii) would be contrary to the interests of the whole community;
  - (b) an authority whose consent is required for the issue of the coastal use permit, refuses to give that consent.
- (6) If an application for a coastal use permit cannot be approved by the issuing authority because of a provision of subsection (5), but the issuing authority believes that issuing the permit would be in the public interest, the issuing authority may refer the application for consideration by the Minister in terms of section 69.
- (7) The issuing authority must ensure that the terms and conditions of any permit are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.

#### **68. Integration with authorisations under other legislation**

- (1) The competent authority for the purposes of issuing a special permit or a coastal use permit to undertake an activity listed in Schedule 3, or a development that involves such an activity, must as far as practicable in the circumstances, co-ordinate or consolidate its application and decision-making processes with those of other organs of state without whose approval or consent the activity or development may not be undertaken.
- (2) If the competent authority decides to issue a special permit or a coastal use permit it may –
- (a) act jointly with the other organs of state referred to in (1) and issue a single integrated special permit or an integrated coastal use permit that grants approval for the proposed activity or development for the purposes of this Act and of any other legislation specified in the permit; or
  - (b) issue the special permit or coastal use permit as part of a consolidated authorisation consisting of authorisations issued under different legislation by the persons competent to do so, that have been consolidated into a single document in order to ensure that the terms and conditions imposed by each competent authority are comprehensive and mutually consistent.
- (3) If an integrated permit is to be regarded as a valid authorisation or approval for the purposes of other legislation specified in the integrated permit, then the decision-making process for issuing that integrated permit must comply with both the requirements of this Act and of that other legislation.
- (4) An integrated permit –
- (a) must specify the statutory provisions in terms of which it has been issued;

- (b) must identify the authority or authorities that have issued it; and
  - (c) if it is to be regarded as an approval or an authorisation under other legislation, must state this and identify each such approval or authorisation; and
  - (d) must indicate to whom applications for any amendment or cancellation of the integrated permit must be made.
- (5) Unless an integrated permit provides otherwise, any provisions of it is enforceable both in terms of this Act and in terms of any other statutory provision in terms of which it was issued, except that a provision that could not lawfully have been included in a permit issued exclusively under other legislation cannot be enforced under that legislation.
- (6) The Minister may prescribe that an environmental authorisation may be regarded as a coastal use permit for the purposes of this Act, either generally or in specific circumstances.

**69. Minister may grant permits in the interests of the whole community**

- (1) If an application for a permit is referred to the Minister in terms of section 67(6) the Minister may, after consultation with the MEC of the relevant province, issue or authorise the issue of the permit –
- (a) if the activity for which the permit is required is overwhelmingly in the interests of the whole community despite the adverse effect it is likely to cause to the coastal zone; and
  - (b) on condition that any irreversible or long-lasting adverse effects must be mitigated as far as is reasonably possible.
- (2) Before deciding the application, the Minister may require the applicant to furnish additional information, including the results of any further studies undertaken.

***Part 4: Coastal land leases and coastal concessions on coastal public property***

**70. Award of leases and concessions on coastal public property**

- (1) Subject to sections 72 and 100, no person may occupy any part of, or site on, or construct or erect any building, road, or structure on or in, coastal public property except under and in accordance with a coastal land lease awarded by the Minister in terms of this Chapter.
- (2) Subject to section 100, 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 except under and in accordance with –

- (a) a coastal concession awarded by the Minister in terms of this Chapter; or
  - (b) an authorisation issued under the Marine Living Resources Act.
- (3) A coastal land lease or coastal concession may be awarded by the Minister either –
- (a) on application by a person; or
  - (b) if the Minister so determines in any specific case, through a prescribed bid process.
- (4) An application for a coastal land lease or coastal concession must be lodged in the prescribed manner.
- (5) A coastal land lease or coastal concession awarded in terms of this Chapter does not relieve the lessee or concessionaire from the obligation –
- (a) to obtain any other authorisation that may be required in terms of other legislation; or
  - (b) to comply with any other legislation.

#### **71. Terms of coastal land leases and coastal concessions**

- (1) A coastal land lease or coastal concession –
- (a) must be awarded for a fixed period of time of not more than 20 years;
  - (b) is subject to any prescribed conditions 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 or royalty.
- (2) A coastal land lease or coastal concession on land that is partially or completely submerged by coastal waters may authorise the lessee to use the water above that land either exclusively or for specified purposes.

### *Part 5: General provisions*

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

- (1) The, MEC or the Minister may direct that land within the coastal zone be temporarily occupied to build, maintain or repair works to implement a coastal management programme, or to respond to pollution incidents or emergency situations, and may for this purpose –
- (a) take from the land stone, gravel, sand, earth or other material;
  - (b) deposit materials on it; and
  - (c) construct and use temporary works on it, including roads.

- (2) The powers of the Minister in terms of subsection (1) are delegated to the MEC but may be exercised by the Minister in accordance with section 96.
- (3) If the land is private property, the MEC or Minister acting in terms of subsection (1) must, before occupying the land, give the occupier and the owner of the land reasonable notice, in writing, of the intention to occupy and such occupation shall be considered a deprivation.

### **73. Amendment, suspension or cancellation of authorisations**

- (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 in the opinion of the Minister, 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, 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 Minister;
  - (c) cancel the authorisation from a date determined by the Minister;
  - (d) alter the terms or conditions of the authorisation; or
  - (e) decide not to amend, revoke, suspend or cancel the authorisation.
- (4) Notwithstanding the provisions of subsections (2) and (3), the Minister may, whenever he or she is of the opinion that 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 a authorisation amend, revoke, suspend or cancel the authorisation.

- (5) If the Minister intends to exercise the powers under sub-regulation (4), then the provisions of subsection (2) apply with the relevant changes.
- (6) If the Minister or an issuing authority has reason to believe that it is necessary to exercise powers under subsections (3) or (4) urgently 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 in subsection (2).

## CHAPTER 8

### MARINE AND COASTAL POLLUTION CONTROL

#### 74. Discharge of effluent into coastal waters

- (1) No person shall discharge effluent that originates from a source on land into coastal waters except in terms of a general authorisation referred to in subsection (2) or a coastal waters discharge permit issued under this section by the Minister after consultation with the member of the Cabinet responsible for water affairs.
- (2) The Minister, after consultation with the member of the Cabinet responsible for water affairs, may by notice in the *Gazette* generally authorise all, or a category of persons to discharge effluent into coastal waters.
- (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 and send a copy of the application to the Department of Water Affairs –
  - (a) within 24 months of the date of commencement of this Act if the discharge is in terms of a licence or authorisation under the National Water Act; or
  - (b) within 36 months of the date of commencement of this Act if the discharge is a continuation of an existing lawful water use in terms of sections 32 or 33 of the National Water Act.
- (5) Unless a person referred to in subsection (4) is directed otherwise by a person acting in terms of this

Act or the National Water Act, it is not an offence for that person to discharge effluent that originates from a source on land into coastal waters if –

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

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

- (a) must not waste water;
- (b) may only do so to the extent that it is not reasonably practicable to return any freshwater in that effluent to the water resource from which it was taken;
- (c) must discharge the effluent subject to any condition contained in the relevant authorisation;
- (d) must comply with any applicable waste standards or water management practices prescribed under this Act or under section 23 of the National Water Act, unless the conditions of the relevant authorisation provide otherwise; and
- (e) must register the discharge with the Department of Water Affairs and Forestry.

(7) The Minister and the member of the Cabinet responsible for water affairs, must, when deciding whether or not to issue a general authorisation referred to in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including–

- (a) the interests of the whole community;
- (b) the socio-economic impact if the disposal is authorised, as well as if it is not;
- (c) the coastal management programmes applicable in the area;
- (d) the likely impact of the proposed disposal on the coastal environment;
- (e) the Republic's obligations under international law;
- (f) the factors listed in section 27 of the National Water Act; and
- (f) any other factors that may be prescribed.

(8) The Minister must not grant an application in terms of subsection (3) for a coastal waters discharge permit if doing so is likely –

- (a) to cause irreversible or long-lasting adverse effects that cannot satisfactorily be mitigated;
- (b) to prejudice significantly the achievement of any objective set out in the national coastal management programme or the applicable provincial coastal management programme; or
- (c) to be contrary to the interests of the whole community.

- (9) The Director-General in consultation with director-general of the department responsible for water affairs must within five years of the date of commencement of this Act jointly review all authorisations issued before the commencement of this Act that authorise the discharge of effluent into coastal waters in order to determine the extent to which they comply with the requirements of this Act and of other legislation administered by those Departments, and must make recommendations to the Minister and to the member of the Cabinet responsible for water affairs as to whether or not–
- (a) the discharge should be prohibited;
  - (b) in the case of a discharge into the sea, whether or not a permit should be issued under subsection (1);
  - (c) in the case of a discharge into a estuary whether or not the discharge should be authorised in terms of :
    - (i) a permit issued under subsection (1) and a permit issued under the National Water Act; or
    - (ii) an integrated permit referred to in section 72 of the Act and as envisaged in section 18(4) of the National Water Act.
- (10) The Minister and the member of the Cabinet responsible for water affairs must within five years of the commencement of this Act decide whether or not to issue a permit or permits referred to in subsection (10) and the conditions that will apply to any permits issued, but before doing so, must give the holders of authorisations issued prior to the commencement of this Act a reasonable opportunity of making representations.
- (11) An organ of state that issues a permit under subsection (1) must report every three years in the prescribed form to the National Coastal Committee on the status of each pipeline that discharges effluent into coastal waters and its impacts on the coastal environment.

#### **75. Prohibition of incineration or dumping at sea**

- (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
    - (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 at sea –
    - (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 sea of that waste or other material has been authorised in terms of a dumping permit granted under section 76;

- (e) except on the authority of a dumping permit granted under section 76 –
    - (i) dump at sea any waste or other material within the coastal waters or the exclusive economic zone; or
    - (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 under and in accordance with the written permission of that state.
- (2) A person who incinerates, or dumps without a dumping permit, waste or other material at sea shall not be convicted of contravening subsection (1)(e)(i) or (ii) if that person proves –
- (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
  - (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 without delay reported to the Department.

## **76. Dumping permits**

- (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
  - (b) pay the prescribed fee.
- (2) When deciding an application for a dumping permit, the Minister shall have regard to the following –
  - (a) the Waste Assessment Guidelines set out in Schedule 2;
  - (b) any coastal management programme applicable in the area;
  - (c) the likely impact of the proposed dumping on the ecology and marine resources;
  - (d) the interests of the whole community; and

- (e) 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 –
- (a) dredged material;
  - (b) sewage sludge;
  - (c) fish waste, or material resulting from industrial fish processing operations;
  - (d) vessels and platforms or other man-made structures at sea;
  - (e) inert, inorganic geological material;
  - (f) organic material of natural origin; or
  - (g) bulky items primarily comprising iron, steel, concrete and similarly non-harmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping at sea.
- (4) The Minister must not issue a dumping permit if –
- (a) the waste or other material proposed for dumping contains –
    - (i) levels of radioactivity greater than as defined by the International Atomic Energy Agency and adopted by the contracting parties to the *Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* adopted on 7 November 1996);
    - (ii) material which is capable of creating floating debris or otherwise contributing to the pollution of the marine environment and which could be removed from the material proposed for dumping;
  - (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 objective set out in the national coastal management programme or the applicable provincial coastal management programme;
    - (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 may not be issued for a period exceeding twelve months and shall automatically lapse at the end of the period for which it was issued.

**77. Emergencies**

- (1) The Minister may in relation to any application for a dumping permit referred to in section 76 dispense with any prescribed procedure, including any consultation and public participation processes, if –
  - (a) the dumping at sea of a quantity of any particular waste or other material is necessary, in the opinion of the Minister, 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 –
  - (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 –
  - (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
  - (b) inform the International Maritime Organisation of any action taken under this section within a reasonable period thereafter.

**78. National action list**

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

**CHAPTER 9  
APPEALS****79. Appeals**

- (1) A person to whom a coastal protection notice in terms of section 59 or a repair and removal notice in terms of section 60, has been issued, may lodge an appeal against that notice with –

- (a) the Minister if the notice was issued by an MEC; or
  - (b) the MEC of the province concerned, if the notice was issued by a person exercising powers delegated by the MEC or by a municipality in that province.
- (2) A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel an authorisation, may lodge a written appeal against that decision with –
- (a) the Minister, if the decision was taken by:
    - (i) a person exercising powers granted to the Minister by this Act that have been delegated by this Act or by the Minister;
    - (ii) a national organ of state, either acting alone or jointly with other organs of state in accordance with section 68; 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;
    - (ii) a provincial organ of state; or
    - (ii) a municipality in that province.
- (3) A written 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;
  - (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
  - (d) comply with any 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.
- (5) The Minister or MEC may extend the period within which appeals may be lodged and may accept an

appeal delivered out of time if he or she considers it is equitable to do so.

- (6) The Minister or MEC may dismiss an appeal that he or she considers to be trivial, frivolous or manifestly without merit.

#### **80. Appeal Panels**

- (1) The Minister or an MEC may appoint an appeal panel to consider and advise the Minister or the MEC on an appeal.
- (2) The Minister or MEC must –
  - (a) appoint members of the appeal panel on the basis of their integrity and their expertise in relation to the matters that must be considered in deciding the appeal;
  - (b) not appoint a person who was involved in any way in the making of the decision appealed against;
  - (c) not appoint a person if that person, or any spouse, partner or close family member of that person, has a personal or private interest in the appeal.
- (3) The Minister with the consent of the Minister of Finance, or the MEC with the consent of the member of the provincial executive council responsible for finance, must determine the rate of remuneration and the allowances payable to any member of an appeal panel who is not an employee of an organ of state.
- (4) No person may institute an action against a member of an appeal panel for anything that the member said, did, or omitted to do, while acting in good faith with the intention of performing his or her functions as a member.

#### **81. Interim orders by Minister or MEC**

- (1) The Minister or 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 purposes of this Act.
- (2) Without limiting the generality of subsection (1) an interim order may -
  - (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;
  - (d) deal with procedural issues.

- (3) The Minister or an MEC may make an interim order at his or her own initiative, or in response to an application by the appeal panel or a party to the appeal proceedings.
- (4) If a party to the proceedings applies for an interim order, the Minister or MEC must give the parties to the proceedings a reasonable opportunity to make oral or written submissions, but may make an interim order pending the making of submissions by the parties if the Minister or MEC has reason to believe that doing so would be just or desirable in order to protect the coastal environment.

## **82. Proceedings of appeal panels**

- (1) The chairperson of an appeal panel decides when and where the panel meets.
- (2) An appeal panel must give the appellant, the person who made the decision or gave the notice appealed against, and any other interested and affected parties, a reasonable opportunity of making written submissions, and may allow oral representations to be made.
- (3) An appeal panel -
  - (a) must act fairly;
  - (b) may determine its own procedures;
  - (c) may convene hearings and make orders concerning preliminary and procedural matters;
  - (d) may summon and examine witnesses on oath;
  - (e) is not bound by any rules of evidence and may consider whatever information that it believes to be relevant; and
  - (f) must, in considering the merits of an appeal, have regard to:
    - (i) the purpose of this Act;
    - (ii) any relevant coastal management objectives or standards and relevant policies; and
    - (iii) guidelines published or endorsed by the Department or the provincial lead agency.
- (4) An appeal panel must give a written report to the Minister or MEC setting out its findings and recommendations.
- (5) The decision of the majority of the members of an 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.

**83. Determination of appeal by Minister or MEC**

- (1) The Minister or MEC must consider the appeal and may -
- (a) dismiss the appeal and confirm the decision appealed against;
  - (b) uphold part or all of the appeal and either vary the decision appealed against or set aside the decision and make a new decision; 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 MEC must have regard to -
- (a) the purpose of this Act and any relevant coastal management objectives; and
  - (b) the findings and recommendations of the appeal panel, but is not bound by them.

**CHAPTER 10**  
**ENFORCEMENT**

**84. Offences**

- (1) A person is guilty of a category one offence if that person –
- (a) undertakes an activity listed in Part A of Schedule 3 without a special permit under subsection 63(2);
  - (b) undertakes an activity listed in Part C of Schedule 3, or a development that involves such an activity, without a coastal use permit in terms of section 65;
  - (c) discharges effluent originating from a source on land into coastal waters in contravention of section 74;
  - (d) incinerates at sea any waste or material in contravention of section 75(1);
  - (e) loads, imports or exports any waste or other material to be dumped or incinerated at sea in contravention of section 75(1);
  - (f) dumps any waste at sea in contravention of section 75(1);
  - (g) dumps any waste or other material at sea without a dumping permit in contravention of section 75(2).
  - (h) alters any permit, coastal land lease or coastal concession;
  - (i) fabricates or forges any document for the purpose of passing it as a permit, lease or concession;

- (j) passes, uses, alters or has in possession any altered or false document purporting to be a permit, lease or concession; or
  - (k) knowingly makes any false statement or report, for the purpose of obtaining or objecting to, a permit, lease or concession.
- (2) A person is guilty of a category two offence if that person –
- (a) fails to comply with a repair and removal notice issued in terms of section 60;
  - (b) undertakes an activity listed in Part B of Schedule 3, or a development that involves such an activity, without a coastal use permit in terms of section 63; or
  - (c) undertakes a controlled commercial activity in contravention of section 66.
- (3) A person who is the holder of an authorisation is guilty of a category two offence if that person –
- (a) contravenes or fails to comply with a condition subject to which the authorisation has been issued or awarded;
  - (b) performs an activity for which the authorisation was issued or awarded otherwise than in accordance with any conditions subject to which the authorisation was issued or awarded; or
  - (c) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a) or (b).
- (4) A person is guilty of a category three offence if that person –
- (a) fails to comply with a coastal protection notice issued in terms of section 59; or
  - (b) contravenes any other provision of this Act which is not referred to in sub-regulations (1), (2) or (3).

## 85. Penalties

- (1) A person who is guilty of a category one offence referred to in section 84 may be sentenced to a fine of up to five million Rand or imprisonment for a period of up to ten years, or to both a fine and such imprisonment.
- (2) A person who is guilty of a category two offence referred to in section 84 may be sentenced on a first conviction for that offence to a fine of up to R500, 000 (five hundred thousand Rands) or to imprisonment or community service for a period of up to five years, or to a combination of a fine, imprisonment and community service.
- (3) A person who is guilty of a category three offence referred to in section 84 may be sentenced on a first conviction for that offence to a fine of up to R20,000 (twenty thousand Rands) or community service for

a period of up to six months or to both a fine and such service.

- (4) A person who is guilty of a category two or three offence may be sentenced on a second conviction for that offence as if he or she has committed a category one or two offence, respectively.
- (5) A court that sentences any person-
- (a) to community service for an offence in terms of this Act must impose a form of community service which benefits the coastal environment, unless it is not possible to impose such a sentence in the circumstances;
  - (b) for any offence in terms of this Act, may suspend, revoke or cancel an authorisation or permit granted to the offender under this Act.

#### **86. Jurisdiction of courts**

- (1) A magistrate's court has jurisdiction in the prosecution of any offence in terms of this Act and to impose any penalty provided for in this Act.
- (2) 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.

#### **87. Actions in relation to coastal public property**

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

## **CHAPTER 11**

### **GENERAL MINISTERIAL POWERS AND DUTIES**

#### *Part 1: Regulations*

#### **88. Regulations by Minister**

- (1) The Minister may make regulations relating to any matter which this Act requires to be dealt with in

regulations or that may be necessary to facilitate the implementation of this Act, including, but not limited to, regulations relating to –

- (a) the implementation and enforcement of the national coastal management programme;
- (b) the elimination of poverty in communities dependent on coastal resources for their livelihood;
- (c) the sustainable use of coastal resources;
- (d) coastal public property, including regulations concerning –
  - (i) public access to coastal public property;
  - (ii) the rehabilitation of coastal public property;
  - (iii) fees, costs, charges, rents and royalties for the use of coastal public property; and
  - (iv) research conducted within, or in respect of, coastal public property;
- (e) the type and format of data to be submitted to the Department or other organs of state for the purposes of monitoring the coastal environment and the implementation of this Act or maintaining a coastal information system;
- (f) the establishment of national norms, standards and frameworks to implement this Act, including systems, guidelines, protocols, procedures, standards and methods, concerning -
  - (i) the content and regular revision of the coastal management programmes of provinces and municipalities
  - (ii) the implementation and enforcement of coastal management programmes;
  - (iii) the monitoring of the implementation of coastal management programmes and the performance of any functions contemplated in this Act including indicators to evaluate effectiveness and progress;
  - (iv) the amendment of coastal zoning schemes;
  - (v) the quality of coastal public property and coastal ecosystems;
  - (vi) the factors that must be taken into account when deciding applications;
  - (vii) the circumstances in which exemption may be given from compliance with a coastal management programme;
  - (viii) the authorisation of uses of the coastal zone that do not conform with the relevant coastal zoning scheme;
  - (ix) the outcomes that must be achieved by managing and treating all or any category of effluent, discharges from storm-water drains, or waste or other material, before it is discharged or deposited on or in coastal public property or in a place within the coastal zone from where it is likely to enter coastal public property, including those relating to the kind, quantity and characteristics of effluent, waste or other material that may be discharged or deposited;

- (x) who should monitor and analyse effluent, waste or other material referred to in paragraph (ix) and the methods that should be used to do so;
- (g) the procedures to be followed with the lodging and consideration of applications for authorisations including –
  - (i) the conditions with which applicants must comply before or after the lodging of their applications;
  - (ii) the application fees to be paid;
  - (iii) the authorities that will be competent to issue the different categories of authorisation;
  - (iv) the consultation procedures to be followed with organs of state and other interested and affected parties;
  - (v) the authorities whose consent is required before permits may be issued;
  - (vi) the procedures for objecting to such applications;
  - (vii) the powers of issuing authorities when considering and deciding such applications;
  - (viii) the factors that must be taken into account when deciding applications;
  - (ix) the circumstances in which applications must be refused or may be approved and guidelines as to the conditions on which permits may or must be issued;
  - (x) the bid process to be followed for the award of coastal land leases and coastal concessions;
- (h) the contents of authorisations;
- (i) the giving of security in respect of any obligation that may arise from carrying out activities authorised by permits, coastal land 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 -
  - (i) the period within which appeals must be lodged;
  - (ii) the fees to be paid;
  - (iii) the conditions with which appellants must comply before or after the lodging of their appeals;
  - (iv) the powers of, and the procedure to be followed by, an MEC when considering and deciding such appeals;
  - (v) 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 73;
- (k) methods, procedures and conditions of enforcing compliance with permits, including integrated permits referred to in section 68;

- (l) the issuing and contents of notices to persons who have contravened or failed to comply with –
    - (i) a provision of this Act;
    - (ii) a coastal management programme; or
    - (iii) a condition of a permit, coastal land lease or coastal concession;
  - (m) training, education and public awareness programmes on the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources;
  - (n) the presence and use of vehicles and aircraft within the coastal zone;
  - (o) the presence and recreational use of vessels on coastal waters ;
  - (p) the seizing, removal and disposal of vehicles, vessels, aircraft or property suspected of being used in the commission of an offence under this Act and of coastal resources suspected of having been illegally obtained; and
  - (q) methods, procedures and conditions for obtaining access to relevant information, including entry to private property.
- (2) The Minister must obtain the consent of the Minister of Finance before making any regulation that -
- (a) will entail the expenditure of funds in future years; or
  - (b) prescribes application fees for, or other charges 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 levies, fees, charges, rents or royalties;
  - (b) the member of the Cabinet responsible for water affairs before making any regulations concerning estuaries;
  - (c) the MEC before making any regulations concerning the coastal zone within that province.

### **89. Regulations by MECs**

- (1) The MEC of a province may in consultation with the Minister, make regulations that are consistent with any national norms or standards that may have been prescribed, relating to –
- (a) the implementation and enforcement of the coastal management programme of the province;
  - (b) the management of the coastal buffer zone within the province;
  - (c) the use of coastal public property for recreational purposes;

- (d) the impounding, removal and disposal of vehicles, vessels, aircraft or property found abandoned on coastal public property;
  - (e) the granting of permission for the erection, placing, alteration or extension of a structure that is wholly or partially seaward of a coastal set-back line and the process to be followed for acquiring such permission, including, the authority by whom, the circumstances in which, and the conditions on which, such permission may be given;
  - (f) the implementation within the province of any national norm, framework or standard referred to in section 88(f);
  - (g) any other matter referred to in section 88, other than in paragraph (f) of that section, that may be necessary to facilitate the implementation of this Act in the province.
- (2) Any regulation which will entail the expenditure of funds in future years may be made only with the concurrence of the MEC responsible for finance in the province.

#### **90. General provisions applicable to regulations**

- (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 section 88 or 89.
- (2) Subsection (1) need not be applied to a minor or a mere technical amendment to regulations.
- (3) Regulations made in terms of section 88 or 89 may –
- (a) restrict, prohibit or control any act that may have an adverse effect on coastal environment, either absolutely or conditionally;
  - (b) apply –
    - (i) generally throughout the Republic or province, as the case may be, or only in a specified area or category of areas;
    - (ii) generally to all persons or only to a specified category of persons;
    - (iii) generally to all prohibited activities or only to a specified activity or category of activities; or
    - (iv) generally to all wastes or other materials or only to specified waste or other material or a category of waste or other material;
  - (c) differentiate between –
    - (i) different areas or categories of areas;
    - (ii) different persons or categories of persons;
    - (iii) different activities or categories of activities; or
    - (iv) different wastes or other materials or categories of wastes or other materials;
  - (d) provide that any person who contravenes or fails to comply with a provision thereof is guilty of an

offence and liable on conviction to –

- (i) imprisonment for a period not exceeding two years;
- (ii) an appropriate fine; or
- (iii) both a fine and imprisonment.

#### **91. Amendment of Schedules 2 and 3**

The Minister must by notice in the *Gazette* amend –

- (a) Schedule 2 as may be necessary to ensure that it continues to give effect to the Republic's obligations under international law; and
- (b) Schedule 3 after consultation with any organ of state that is responsible for authorising any development or activity that the Minister proposes to include in, or delete from, that Schedule.

### *Part 2: Powers to be exercised by Minister and MEC*

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

- (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 buffer zone or in terms of section 23 to declare a special management area, if all or any part of that area –
  - (a) extends into the sea for more than 500 metres from the high water mark;
  - (b) is a national protected area as defined in the Protected Areas Act;
  - (c) straddles a boundary between two provinces; or
  - (d) extends up to, or straddles, the borders of the Republic of South Africa.
- (2) If subsection (1) applies, references in sections 22, 23, 24, 25, 26, and 27 to the MEC must be read as reference to the Minister and the reference in section 23 to the Minister must be read as a reference to the MEC.

#### **93. Directives by MEC to municipalities**

- (1) If an MEC has reason to believe that a municipality is not taking adequate measures to prevent or remedy adverse effects on the coastal environment, to implement or monitor compliance with provincial norms and standards, or to give effect to the provincial coastal management programme, the MEC may in writing direct the municipality to take specified measures to do so.

- (2) The MEC must not give a directive under subsection (1) without first consulting with the municipality and giving it a reasonable opportunity to make representations.
- (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.

### *Part 3: Delegations*

#### **94. Delegation by Minister**

- (1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to –
  - (a) the Director-General or to other officials in the Department;
  - (b) the MEC, by agreement with the MEC; or
  - (c) any other organ of state, statutory functionary, or management authority of a special management area, by agreement with that organ of state, statutory functionary or management authority.
- (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;
  - (b) must be in writing;
  - (c) may include the power to sub-delegate; and
  - (d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC, organ of state or statutory functionary.
- (4) The Minister may confirm, vary or revoke any decision made using a power granted by a delegation or sub-delegation in terms of a provision of this Act or of a statute repealed by this Act.
- (5) The Minister –
  - (a) may not delegate a power or duty vested in the Minister –
    - (i) to make regulations;
    - (ii) to publish notices in the *Gazette*; or
    - (iii) to appoint the members of the National Coastal Committee; or

- (b) may withdraw by notice in writing any delegation in terms of a provision of this Act or of a statute repealed by this Act.

#### **95. Enforcement by Minister**

- (1) If the Minister has reason to believe that an MEC is not taking adequate measures to prevent or remedy adverse effects on coastal public property, to implement or monitor compliance with national norms and standards, or to give effect to the national coastal management programme, the Minister may in writing request the MEC to take specified measures to do so.
- (2) If the MEC does not comply with a request under subsection (1) the Minister may exercise any powers given to the Minister by this Act in order to take any measures referred to in the request, including the power –
  - (a) to issue coastal protection notices and repair and removal notices delegated to the MEC in terms of sections 59 (3) and 60 (2) 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 72.
- (3) The Minister must not take any measures under subsection (2) without first consulting with the MEC and giving the MEC a reasonable opportunity to make representations.

#### **96. Delegation by MECs**

- (1) The MEC may delegate any power or duty assigned or delegated to the MEC in terms of this Act to –
  - (a) the head of the provincial lead agency; or
  - (b) any other organ of state or a statutory functionary, by agreement with that organ of state or statutory functionary.
- (2) A delegation in terms of subsection (1) –
  - (a) is subject to any limitations, conditions and directions the MEC may impose;
  - (b) must be in writing;
  - (c) may include the power to sub-delegate; and
  - (d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The MEC may confirm, vary or revoke any decision made using a power granted by a delegation or sub-delegation in terms of this section.

- (4) The MEC –
- (a) may not delegate a power or duty vested in the MEC –
    - (i) to make regulations; or
    - (ii) to publish notices in the *Gazette*; or
    - (iii) to appoint the members of the Provincial Coastal Committee; or
  - (b) may withdraw any delegation by notice in writing.

***Part 4: General matters***

**97. Information and reporting on coastal matters**

- (1) The Minister must progressively, and within the available resources of the Department, make available and accessible to the public sufficient information concerning the protection and management of the coastal zone to enable the public to make an informed decision of the extent to which the State is fulfilling its duty in terms of section 3.
- (2) An MEC must –
- (a) prepare a report on the state of the coastal environment in the province every four years which must contain any information prescribed by the Minister;
  - (b) immediately update the report once applicable information pertaining to the coastal environment under the jurisdiction of the MEC becomes available; and
  - (c) submit the report and every update to the Minister.
- (3) The Minister must prepare and regularly update a national report on the state of the coastal environment based on provincial reports submitted to the Minister in terms of subsection (2).

**98. Co-ordination of actions between provinces and municipalities**

The MEC must –

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

CHAPTER 12  
MISCELLANEOUS MATTERS

**99. Existing leases on, or rights to, coastal public property**

- (1) This Act does not, subject to subsection (3), affect the continuation of –
  - (a) a lawful lease on land or premises that forms part of coastal public property, including a port or harbour, that existed when this Act took effect; or
  - (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.
  
- (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.
  
- (3) A person may undertake any activity authorised by lease or right referred to in subsection (1) without obtaining a coastal land 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
  - (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.
  
- (5) An application by such person 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.

#### **100. Unlawful structures on coastal public property**

- (1) Subject to 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 land 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 land 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 issue a written repair and removal notice to that person under section 60.
  
- (4) This section does not affect –
  - (a) any legal proceedings commenced prior to the commencement of this Act to enforce any prohibition or restriction on construction or other activities within the coastal conservation area as defined in the Nature Conservation Act 10 of 1987 of the former Republic of Ciskei or the Environment Conservation Decree 9 of 1992 of the former Republic of the Transkei; or
  - (b) any legal proceedings commenced after the commencement of this Act to enforce any notice served prior to the commencement of this section that required the addressee to vacate or demolish any building or structure that was constructed unlawfully on the seashore, within the admiralty reserve, or within the coastal conservation areas referred to in paragraph (a).

#### **101. Existing lawful activities in coastal buffer zone**

- (1) For a period of 24 months after the commencement of this Act, any person who, when this Act commenced was lawfully engaged in –
  - (a) carrying out, in the coastal buffer zone, an activity:

- (i) listed in Part A of Schedule 3 must be regarded as being the holder of a special permit issued under section 63(2) that authorises the carrying out of that activity;
  - (ii) listed in Part B of Schedule 3 must be regarded as being the holder of a coastal use permit issued under section 63 that authorises the carrying out of that activity;
- (b) abstracting water from coastal waters must be regarded to be the holder of a coastal use permit issued under section 65 that authorises that activity.
- (2) Any person referred to in subsection (1), who within 24 months of the commencement of this Act applies to the Minister for special permit or to the relevant issuing authority for a coastal use permit that will authorise the continuation of the activity referred to in subsection (1), shall continue to be regarded as the holder of the special permit or coastal use permit applied for until the Minister or the issuing authority decides whether to grant or refuse the application.
- (3) During the 24 month period referred to in subsection (1), the Minister may issue a special permit and the relevant issuing authority may issue coastal use permit authority to any person referred to in subsection (1), even if that person has not applied for it, provided that before doing so the Minister or issuing authority gives that person a reasonable opportunity to make representations.
- (4) This section does not affect –
- (a) the powers of a competent authority under section 73 to amend, suspend or cancel an authorisation;
  - (b) any obligation which a person referred to in subsection (1) may have under section 100(2); or
  - (c) the lapsing of a lease or right under section 100(3).

#### 102. Repeal and amendment of legislation

The legislation referred to in Schedule 1 is repealed and amended to the extent indicated in the third column of that Schedule.

#### 103. Savings

- (1) Any regulation made in terms of the Sea-shore Act, 1935 (Act 21 of 1935), must, to the extent that it is consistent with this Act, be regarded as having been made in terms of this Act.
- (2) Anything else done in terms of legislation repealed in terms of section 102 which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.
- (3) The *White Paper for Sustainable Coastal Development in South Africa* of April 2000 must be regarded

as the national coastal management programme until a national coastal management programme has been adopted in accordance with section 41.

#### **104 Limitation of liability**

- (1) Subject to subsection (2), neither the State nor any other person is liable for any damage or loss caused by a person who -
- (a) exercises a power or performs a duty in terms of this Act;
  - (b) acts in the mistaken belief that they are validly exercising a power or performing a duty in terms of this Act; or
  - (c) fails to exercise any power or perform any duty in terms of this Act.
- (2) Subsection (1) does not protect the State or any other person from liability if the person who caused the damage or loss acted negligently or in bad faith.

#### **105. Short title**

This Act is the Integrated Coastal Management Act, 2006, and takes effect on a date or dates determined by the President by proclamation.

**SCHEDULE 1**  
**LAWS REPEALED AND AMENDED**

Number and year of the law	Short title	Extent of repeal or amendment
21 of 1935	Sea-shore Act (as amended)	Repeal the whole
73 of 1980	Control of Dumping at Sea Act (as amended)	Repeal the whole
10 of 1987 (of the former Ciskei)	Nature Conservation Act	Repeal sections 41 to 46 inclusive. Amend section 1 by deleting the definition of "coastal conservation area" and replacing it with: "'coastal buffer zone" has the same meaning as in the National Environmental Management: Coastal Zone Act, 2002" Replace all references to "coastal conservation area" in the Act with references to "coastal buffer zone".
9 of 1992 (of the former Transkei)	Environmental Conservation Decree	Repeal Sections 39 and 40. Amend section 1 by deleting the definition of "coastal conservation area" and replacing it with: "'coastal buffer zone" has the same meaning as in the National Environmental Management: Coastal Zone Act, 2002" Replace all references to "coastal conservation area" in the Act with references to "coastal buffer zone".
15 of 1994	Maritime Zones Act (as amended)	Amend section 8(2) by deleting the phrase "unalienated State land" and replacing it with "the common property of the people of the Republic".
107 of 1998	National Environmental Management Act, 1998	Amend the definition of "specific environmental management Acts" in section 1 by deleting the word "and" where it appears after subparagraph (i) and inserting a new subparagraph (iii) after subparagraph (ii) to read: "the National Environmental Management: Integrated Coastal Management Act, 2006;" Amend part (a) of Schedule 3, by inserting at the end of that part the following: " Act No # of 2006 Integrated Coastal Management Bill Sections 93 and 101

**SCHEDULE 2**  
**GUIDELINES FOR THE ASSESSMENT OF WASTES OR OTHER MATERIAL THAT MAY BE**  
**CONSIDERED FOR DUMPING AT SEA**  
**(“the Waste Assessment Guidelines”)**

**GENERAL**

1. This Schedule sets out guidelines for reducing the necessity for dumping at sea in accordance with Schedule II to the Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters adopted on 7 November 1996.

**WASTE PREVENTION AUDIT**

2. The initial stages in assessing alternatives to dumping at sea should, as appropriate, include an evaluation of –
  - (a) the types, amounts and relative hazard of wastes generated;
  - (b) details of the production process and the sources of wastes within that process; and
  - (c) the feasibility of the following waste reduction/prevention techniques:
    - (i) product reformulation;
    - (ii) clean production technologies;
    - (iii) process modification;
    - (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 source, an applicant for a permit is expected to formulate and implement a waste prevention strategy, in collaboration with the relevant local, provincial and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions must assure compliance with any resulting waste reduction and prevention requirements.
4. For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local, provincial and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

### CONSIDERATION OF WASTE MANAGEMENT OPTIONS

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

### CHEMICAL, PHYSICAL AND BIOLOGICAL PROPERTIES

7. A detailed description and characterization 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 characterized that proper assessment cannot be made of its potential impacts on human health and the environment, that waste may not be dumped.  
 Characterization of the wastes and their constituents must take into account –
  - (a) origin, total amount, form and average composition;
  - (b) properties: physical, chemical, biochemical and biological;
  - (c) toxicity;
  - (d) persistence: physical, chemical and biological; and
  - (e) accumulation and biotransformation in biological materials or sediments.

### ACTION LIST

8. In selecting substances for consideration in the Action List referred to in section 78, the Minister must give priority to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g., cadmium, mercury, organohalogens, petroleum hydrocarbons, and, whenever relevant, arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogens). An Action List can also be used as a trigger mechanism for further waste prevention considerations.
  
9. The Action List must specify an upper level and may also specify a lower level. The upper level should

be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:

- (a) wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping at sea through the use of management techniques or processes;
- (b) wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping at sea; and
- (c) wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping at sea can be determined.

#### **DUMP-SITE SELECTION**

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

#### **ASSESSMENT OF POTENTIAL EFFECTS**

- 11. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the "Impact Hypothesis". It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.
- 12. The assessment for dumping at sea must integrate information on waste characteristics, conditions at the proposed dump-site(s), fluxes, and proposed disposal techniques and specify the potential effects on the environment, human health, living resources, amenities and other legitimate uses of the sea. It must define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.
- 13. An analysis of each disposal option must be considered in the light of a comparative assessment of the

following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option may not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping at sea option to be less preferable, a permit for dumping may not be given.

14. Each assessment must conclude with a statement supporting a decision to issue or refuse a permit for dumping at sea.

#### **MONITORING**

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

#### **PERMIT AND PERMIT CONDITIONS**

16. A decision to issue a permit may 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 minimized and the benefits maximized. A dumping permit issued must contain data and information specifying –
  - (a) the types and sources of materials to be dumped;
  - (b) the location of the dump-site(s);
  - (c) the method of dumping at sea; and
  - (d) monitoring and reporting requirements.
17. The Minister must 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.

**SCHEDULE 3****ACTIVITIES THAT MAY NOT BE UNDERTAKEN IN THE COASTAL ZONE WITHOUT A PERMIT UNDER THIS ACT****PART A: ACTIVITIES THAT ARE PROHIBITED WITHIN THE COASTAL BUFFER ZONE UNLESS A SPECIAL PERMIT HAS BEEN GRANTED UNDER SECTION 63(2).**

- A.1 The construction or alteration of railways, highways or inter-city roads, or service areas associated with such railways, highways or roads.
- A.2 Mining or quarrying.
- A.3 The construction of aerial high-tension cables.
- A.4 The disposal of solid waste, rubble, unprocessed sewage or any other effluent likely to cause an adverse effect on the coastal environment.

**PART B: ACTIVITIES THAT MAY NOT BE CARRIED OUT WITHIN THE COASTAL BUFFER ZONE WITHOUT A COASTAL USE PERMIT UNDER SECTION 64.**

- B.1 The draining or reclaiming of any coastal wetland.
- B.2 The erection, construction, placing, or any significant alteration or extension of a building or structure.
- B.3 The construction or any significant alteration or extension of a road.
- B.4 The winning of stones, gravel, or sand.
- B.5 The ploughing or cultivation of land which has not at any time during the preceding ten years been cultivated.
- B.6 The clearing of indigenous vegetation other than cultivated indigenous vegetation.
- B.7 The breeding, cultivation or farming of marine living resources or aquatic animals or aquatic plants.
- B.8 The stabilization or destabilization of dunes.
- B.9 The landing or use of aircraft.

**PART C: ACTIVITIES THAT MAY NOT BE CARRIED OUT WITHIN COASTAL PUBLIC PROPERTY OR THE EXCLUSIVE ECONOMIC ZONE WITHOUT A COASTAL USE PERMIT UNDER SECTION 65.**

- C.1 The erection, construction, placing, alteration or extension of a building or structure on or in any

coastal public property, including an artificial reef, or any structure designed to prevent coastal erosion or to promote accretion of the seashore.

- C.2 The disturbance of any coastal public property in a manner that has or is likely to have an adverse effect on the coastal environment, including any excavations, dredging, draining, drilling or tunnelling.
- C.3 The destruction, damage or disturbance of any coastal public property in a manner that has or is likely to have an adverse effect on biodiversity or habitat.
- C.4 The breeding, cultivation or farming of marine living resources or aquatic animals or aquatic plants.
- C.5 The introduction of any species of alien invasive plant, exotic or non-endemic animal, exotic or non-endemic pathogens or living modified organism into coastal public property or into a place from which it is likely to invade coastal public property.
- C.6 The occupation of any coastal public property.
- C.7 The abstraction of water from coastal waters for agricultural, commercial or industrial purposes, including for aquaculture and desalination, or in a manner that is likely to have an adverse effect.
- C.8 The removal of any sand, stones, minerals or other natural material –
  - (i) for commercial purposes;
  - (ii) in such quantities that the material would have a commercial value; or
  - (iii) in a manner that may have an adverse effect on any aspect of the coastal environment;
- C.9 The carrying on of any other activity which in terms of a coastal management programme is prohibited without a permit.
- C.10 The stabilization or destabilization of dunes.
- C.11 The landing or use of aircraft.