

A user-friendly Guide to the INTEGRATED COASTAL MANAGEMENT ACT of South Africa



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A Partnership Programme involving the Public and Private sectors, led by the Department of Environmental Affairs (DEA).

Barcoded ISBN



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Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA



ENGINEERS AND ENVIRONMENTAL CONSULTANTS

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**environmental affairs**

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA



ENGINEERS AND ENVIRONMENTAL CONSULTANTS

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Suggested citation: Celliers, L., Breetzke, T., Moore, L. and Malan, D. 2009. A User-friendly Guide to South Africa's Integrated Coastal Management Act. The Department of Environmental Affairs and SSI Engineers and Environmental Consultants. Cape Town, South Africa. 100 pp.

Printed and distributed free of charge by The Department of Environmental Affairs, South Africa & SSI Engineers and Environmental Consultants, a DHV group company.

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**DISCLAIMER**

This document does not in any way have legal authority or take precedence over the National Environmental Management: Integrated Coastal Management Act (Act No. 24 of 2008) (ICM Act) nor does it purport to stand in the place of or substitute any of the wording of the ICM Act but rather serves as a paraphrased user-friendly guide to the Act and should at all times be read in conjunction with the ICM Act. The ICM Act remains the final and legal authority on integrated coastal management in South Africa. Acts of Parliament are occasionally amended and the reader is advised to consider the latest version of any act referred to in this guide.

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Desktop and layout design by Jo Petzer of Cosmic Creations  
[www.cosmic-creations.blogspot.com](http://www.cosmic-creations.blogspot.com)

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**Acknowledgements**

This guide is the product of a public/private partnership between the Department of Environmental Affairs (DEA) and SSI Engineers and Environmental Consultants (SSI). All content contained within this guide has been through a series of internal review processes within the Marine and Coastal Management Branch of DEA and SSI, the outputs of which have been finalized and produced as a collaborative effort. Special thanks to the following individuals for their contributions to the production of this guide and the use of some of the photographs:

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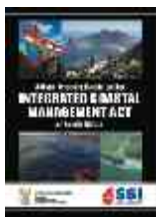
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*Cover images:* Northern Cape fisher folk; Constantiaberg and Noordhoek Peak, Cape Town, Durban Golden Mile; Hole-in-the-wall, Eastern Cape

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<sup>1</sup>Some sections of the ICM Act were amalgamated in order to facilitate understanding and for ease of reference. While every effort was made to adhere to the original structure of the ICM Act as far as possible, the order of some sections and subsections has been changed. The Table of Contents thus does not include all sections of the ICM Act. It is however important to note that this Guide does cover all aspects of the Act, but in some cases in a different format such as a flow diagram or table.

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# INTRODUCTORY NOTES



## 1. KEY TO ACRONYMS

CBO:	Community-based organisation
CMP:	Coastal Management Programme
DEA:	Department of Environmental Affairs
DMR:	Department of Mineral Resources
DWA:	Department of Water Affairs
ECA:	Environment Conservation Act
EEZ:	Exclusive Economic Zone
EIA:	Environmental Impact Assessment
EMP:	Environmental Management Plan
HWM:	High-Water Mark
I&AP:	Interested and Affected Party
ICM:	Integrated Coastal Management
ICM Act:	Integrated Coastal Management Act
IDP:	Integrated Development Plan
IMO:	International Maritime Organisation
MCC:	Municipal Coastal Committee
MEC:	Member of Executive Committee
MLRA:	Marine Living Resources Act
MSA:	Municipal Systems Act
NCC:	National Coastal Committee
NEMA:	National Environmental Management Act
NGO:	Non-governmental Organisation
PCC:	Provincial Coastal Committee
SDF:	Spatial Development Framework

## 2. A USER-FRIENDLY GUIDE TO THE ICM ACT

The Acts of Parliament are at best difficult to read and comprehend, and the National Environmental Management: Integrated Coastal Management Act (Act No. 24 of 2008) (hereafter the ICM Act) is no exception. It is with this in mind that this Guide intends to familiarise the reader with the provisions of the ICM Act - a step by step guide as it were - while providing direct reference to the "official" gazetted document. The objective of this Guide is therefore to make the ICM Act accessible and applicable to coastal practitioners and interested parties concerned with specific details and applications of the Act, to such an extent that it becomes standard reference material for information on coastal management in South Africa. This Guide is a "translation" of the ICM Act into everyday language while, at the same time, presenting the contents in such a way as to assist the reader to find and understand the appropriate information. This Guide forms part of a number of publications that will be produced to facilitate the implementation of the ICM Act. These range from the general Summary Guide to the ICM Act, to very specific practitioner's guides that will focus on individual topics or sections in great detail e.g. a Guide to the Production of Coastal Management Programmes (CMPs, ICM Act section 44-55) or the Guide on Interpretation of the Movements in the High-Water Mark (HWM - ICM Act, section 14).

In general, integrated coastal management (ICM) promotes the use of defensible scientific information in conjunction with the principles of cooperative governance in order to achieve sustainable coastal development. ICM is seldom achievable in the presence of 'command-and-control' or 'top-down' prescriptive government. Successful ICM is often characterised by extensive public consultation and democratic decision-making, a concept that is also entrenched in the Constitution of South Africa, a theme which also runs throughout the ICM Act.



Coastal management in South Africa has experienced a number of paradigm shifts or different phases since the 1970s, each with different policy approaches and management practices. This “evolution” of ICM has culminated in a legal tool or Act of Parliament that recognizes the ecological, social and economic interactions within the ocean and land interface. The reason for the development of such an Act that deals specifically with the integrated management of the coastal zone has previously been justified in the Coastal Policy Green Paper (DEAT, 1998, see Box A) as well as the White Paper for Sustainable Coastal Development in South Africa (DEAT, 2000 - see Box A).

#### BOX A

This Guide strongly encourages any reader interested in the ICM Act to also familiarise themselves with the preceding Green and White Papers. The Green Paper was a Discussion Document that led to the White Paper that was adopted by Cabinet as government policy. Many of the recommendations flowing from the White Paper, e.g. the Institutional Framework proposed, have been incorporated in the ICM Act. The Green Paper and White Paper are obtainable from the document portal on the Department of Environmental Affairs website (<http://www.deat.gov.za>), or from the enclosed CD.



The White Paper itself, through the words of the Hon. Mr M.V. Moosa, then Minister of Environmental Affairs and Tourism states that it:

*“...signals a fundamental shift in thinking about our coast and ushers in a new era for coastal management.”*

The White Paper was founded on a national vision for the coast that includes the socially justified sharing of benefits derived from a resource-rich coastal area without compromising the ability of future generations to access those benefits (Glavovic, 2006). Above all, the White Paper promotes ICM, which in its most basic form, represents an acknowledgement that the coastal zone functions as an interconnected system (which includes human activity), and calls for coordinated, integrated and systemic management, whilst simultaneously promoting sustainable coastal development (DEAT, 2000). This is also the essence of the ICM Act that represents a new approach to managing the activities of people in the coastal zone.

### 3. HOW TO USE THIS GUIDE

This Guide is an easy-to-use version of the ICM Act and is intended to promote understanding without compromising the actual intent of the original document. Care has been taken not to deviate too much from the arrangement of the sections of the ICM Act, while summarising the text (where possible) through the use of bullets, tables and figures.

#### 3.1 Summaries and background

Blue text indicates additional information and summary text. For example, each chapter commences with a brief summary of its contents, identifiable by blue text.

#### 3.2 Disclaimer and Direct references to the Act

This Guide *must* be read in conjunction with the official gazetted version of the ICM Act and any possible amendments to ensure full compliance as well as a holistic understanding of the ICM Act. The ICM Act's implementation will be supported by specific regulations promulgated in terms of the ICM Act. The ICM Act and regulations (and any subsequent amendments) can be obtained from the South African government website



(<http://www.gov.za>) or from the Department of Environmental Affairs website ([www.deat.gov.za](http://www.deat.gov.za)). In order to assist the reader each part and section of this Guide is linked to the corresponding section(s) in the Act, visible to the right of each section heading.

### 3.3 Boxes

Any information that is not contained within the Act, but is referred to by the Act, has been included in this Guide as text boxes (see adjacent example). Although not part of the ICM Act, this information is nevertheless important, and has been presented in order to save time that would otherwise be spent searching for this additional information.

#### BOX B

The Marine Living Resources Act (Act No. 18 of 1998)  
This Act provides for the conservation and management of the marine ecosystem, the long-term sustainable utilisation of marine living resources and equitable access to exploitation, utilisation and protection of certain marine living resources.



### 3.4 Other legislation

The ICM Act is a specific environmental management act under the umbrella National Environmental Management Act [NEMA (Act No. 107 of 1998)]. The broad spectrum of issues covered by the ICM Act necessitates links to other legislation. This legislation has been summarised in the text boxes described above, but the complete gazetted documents are available via hyperlinks from the document portal of the South African government website (<http://www.gov.za>).

### 3.5 'Must' vs. 'May' in terms of the Integrated Coastal Management Act

Reference is made throughout the ICM Act to 'must' and 'may' with respect to instructions. A very important distinction needs to be made between these two concepts:

*Must*: this is known as a directive, and compliance with such an instruction is required by law, and is therefore not optional.

*May*: this is known as a permissive, and means that the instruction can be carried out if it is required or appropriate, and compliance is therefore optional.

For example, in Section 35 it says that "The Minister must by notice in the *Gazette* establish a National Coastal Committee (NCC)...". The appointment of the NCC is therefore mandatory.

## 4. LONG TITLE AND PREAMBLE

The ICM Act starts with a very clear rationale for its existence that is spelled out in the long title. The long title provides a longer description of the purposes or scope of the Act. This is followed by a preamble that lists the underlying philosophy and statements of fact that contributed to the development of the Act. In order to better understand the Long Title and Preamble of the ICM Act additional explanatory information is provided below.

### 4.1 Why an Integrated Coastal Management Act?

According to the White Paper (DEAT, 2000), past coastal management efforts were characterised by the fact that the value of the coastal ecosystem was not sufficiently acknowledged as a cornerstone for development.

Coastal management was also resource-centred rather than people-centred, and attempted to control, rather than promote the sustainable use of coastal resources. Furthermore, management of the coastal area was fragmented and uncoordinated, and was undertaken largely on a sectoral basis, with an emphasis on maximising single-purpose and exclusive use of areas and resources. Finally, coastal management were imposed in a “top-down” manner and were focused on regulation and control. There was insufficient recognition of the diversity of our coast – biophysically, socially, economically and institutionally.

## BOX C

Definition of norms, standards and policies.

- Norms: management practices that are regarded as typical or best practice.
- Standards: management rules and guiding principles.
- Policy: a course of action adopted by a management authority.



All of the issues above are contradictory to the objectives of ICM and therefore the ICM Act has been promulgated, first and foremost, to establish the statutory requirements for integrated coastal and estuarine management in South Africa. This would also include norms, standards and policies (see Box C). One of the many reasons for the adoption of this form of management is to promote the conservation of the coastal environment, and to maintain the natural character of coastal landscapes and seascapes. Implicit in the above purposes is the need to ensure that the development and use of natural resources in the coastal zone is socially and economically justifiable, as well as being ecologically sustainable.

The ICM Act is an expression of our shared responsibility to wisely manage the coastal area with its unique natural resources and complex relationship with humans. The ICM Act is meant to guide our behaviour and actions in the coastal zone and to ensure that its benefits can be sustainably and equitably distributed. It is also intended to raise public awareness of the complexities of the coastal area, thereby promoting active participation in the management of the coast. The ICM Act places great emphasis on the benefit of cooperation and shared management responsibilities. Figure A below illustrates the underlying rationale for the establishment of the ICM Act, adapted from the Long Title of the Act.



## 4.2 Preamble

Following the long title, the preamble, or introductory and explanatory statement, explains the underlying philosophy and statements of fact that contributed to the development of the Act. The preamble of the ICM Act recites a number of contemporary and historical facts pertinent to the coastal zone of South Africa. The preamble is reworded below.

<ul style="list-style-type: none"> <li> <span style="display: inline-block; width: 15px; height: 15px; background-color: #f0e68c; margin-right: 10px;"></span>           Everyone, including future generations, has the constitutional right to have the coastal environment protected;         </li> </ul>
<ul style="list-style-type: none"> <li> <span style="display: inline-block; width: 15px; height: 15px; background-color: #f0e68c; margin-right: 10px;"></span>           Integrated management of the coastal zone is essential to achieving this constitutional 'obligation';         </li> </ul>
<ul style="list-style-type: none"> <li> <span style="display: inline-block; width: 15px; height: 15px; background-color: #f0e68c; margin-right: 10px;"></span>           The coastal zone requires a dedicated and integrated management approach that acknowledges the interconnected nature of biophysical, economic, social and institutional considerations;         </li> </ul>
<ul style="list-style-type: none"> <li> <span style="display: inline-block; width: 15px; height: 15px; background-color: #f0e68c; margin-right: 10px;"></span>           Much of the natural heritage of our coastal zone is being wasted by overuse, degradation and inappropriate management;         </li> </ul>
<ul style="list-style-type: none"> <li> <span style="display: inline-block; width: 15px; height: 15px; background-color: #f0e68c; margin-right: 10px;"></span>           The economic, social and environmental benefits of the coastal zone have been unfairly distributed in the past;         </li> </ul>
<ul style="list-style-type: none"> <li> <span style="display: inline-block; width: 15px; height: 15px; background-color: #f0e68c; margin-right: 10px;"></span>           The conservation and sustainable use of the coastal zone requires the establishment of an innovative legal and institutional framework that clearly defines the status of coastal land and waters, and the respective roles of the public, the State and other users of the coastal zone. This framework will also facilitate a new co-operative and participatory approach to managing the coast; and         </li> </ul>
<ul style="list-style-type: none"> <li> <span style="display: inline-block; width: 15px; height: 15px; background-color: #f0e68c; margin-right: 10px;"></span>           Integrated coastal management (ICM) is a dynamic process that evolves through lessons learned from past experiences, and the understanding of the functioning of the coastal zone in its entirety. ICM seeks to co-ordinate and regulate the various human activities that take place on the coast, in order to achieve its conservation and sustainable use.         </li> </ul>

FIGURE B. Preamble of ICM Act.

## 5. PRINCIPLES FOR COASTAL MANAGEMENT

The ICM Act is informed by the NEMA principles as adapted for the coastal zone in the nationally adopted White Paper for Sustainable Coastal Development in South Africa (DEAT, 2000) – see Figure C below.

PRINCIPLE	DESCRIPTION
National Asset	The coast must be retained as a national asset, with public rights to access and benefit from the opportunities provided by coastal resources.
Economic Development	Coastal economic development opportunities must be optimised to meet society's needs and to promote the wellbeing of coastal communities.
Social Equity	Coastal management efforts must ensure that all people, including future generations, enjoy the rights of human dignity, equality and freedom.
Ecological Integrity	The diversity, health and productivity of coastal ecosystems must be maintained and, where appropriate, rehabilitated.
Holism	The coast must be treated as a distinctive and indivisible system, recognising the interrelationships between coastal users and ecosystems, and between the land, sea and air.
Risk Aversion & Precaution	Coastal management efforts must adopt a risk averse and precautionary approach under conditions of uncertainty.
Accountability & Responsibility	Coastal management is a shared responsibility. All people must be held responsible for the consequences of their actions, including financial responsibility for negative impacts.
Duty of Care	All people and organisations must act with due care to avoid negative impacts on the coastal environment and coastal resources.
Integration & Participation	A dedicated, co-ordinated and integrated coastal management approach must be developed and conducted in a participatory, inclusive and transparent manner.
Co-operative Governance	Partnerships between government, the private sector and civil society must be built in order to ensure co-responsibility for coastal management and to empower stakeholders to participate effectively.

FIGURE C. National Environmental Management Act Principles as adapted for the coastal zone of South Africa (taken from DEAT, 2000).



## 6. CHAPTERS OF THE ICM Act

### *CHAPTER 1: Interpretation, Objectives and Application of the ICM Act*

This chapter in the ICM Act lists and defines important words or terms that are used in the Act, and sets out objectives for the application of the Act. Furthermore, it clarifies the role of the State in relation to the coastal environment, indicates to whom and where the ICM Act applies and explains that the Act must be read in conjunction with the NEMA and provides detail on how to reconcile conflicts with other legislation.

### *CHAPTER 2: The Coastal Zone*

This chapter defines the components of the coastal zone in South Africa. It also deals with the spatial aspects, definitions and legal status of the various components of the coastal zone. The ICM Act focuses on regulating human activities within, or that affect the “coastal zone”. The coastal zone comprises coastal public property (mainly Admiralty Reserve and land below the High-Water Mark), the coastal protection zone (an area along the inland edge of coastal public property), coastal access land (which the public may use to gain access to coastal public property), special management areas, and includes any aspect of the environment on, in and above them.

### *CHAPTER 3: Boundaries of Coastal Areas*

This chapter provides procedures for demarcating and adjusting the boundaries of coastal public property, the coastal protection zone, special management areas, coastal access land and authorisations of entry onto such land (sections 26-30). It also sets out the considerations which must apply in respect of such demarcations and adjustments. Interested and affected parties have an opportunity to contribute to the process of demarcating or adjusting boundaries. The purpose of sections 31 and 32 is to provide for the formalising in law of such determinations and adjustments through the marking of boundaries on zoning maps and endorsements by the Registrar of Deeds. Demarcation procedures to change the boundaries of the coastal protection zone are likely to be instituted as the area designated by the Act (either 1 kilometre or 100 metres inland from the boundary of coastal public property, depending on the area) is arbitrary and does not adequately take into account coastal features, issues and stakeholder input to effectively manage the coast.

### *CHAPTER 4: Estuaries*

This chapter aims to facilitate the efficient and coordinated management of all estuaries. This includes provisions that ensure they are managed in accordance with: (a) a National Estuarine Management Protocol (see section 33) approved by the Minister(s) responsible for environment and water affairs; and (b) estuarine management plans for individual estuaries (see section 34). The protocol will provide a national policy for estuary management and guide the development of individual estuarine management plans. Furthermore, it must be ensured that estuarine management plans are aligned with the National Estuarine Management Protocol and the National Coastal Management Programme.

### *CHAPTER 5: Institutional Arrangements*

This chapter describes the institutional arrangements required by the ICM Act. It outlines a directive for the establishment of a National Coastal Committee and Provincial Coastal Committees and makes provision for the optional establishment of coastal committees at municipal level, as well as voluntary coastal officers.

### *CHAPTER 6: Coastal Management*

This chapter establishes new management and planning procedures to ensure that development is sustainable, integrated and in the interest of all user groups. It sets out the legal mechanisms for establishing a proactive planning system for coastal areas that integrates coastal concerns (including the marine dimension)

into the existing provincial and municipal land-based and economic development planning procedures in a manner that is consistent with the policy goals of the White Paper. The current land-use planning system in South Africa is a land-based system that essentially stops at the High-Water Mark. This Chapter is designed to extend that system across the land/sea interface in order to allow for integrated coastal planning and the proactive control of the use of coastal resources.

#### *CHAPTER 7: Protection of Coastal Resources*

This chapter provides measures for protecting the coastal environment from detrimental activities. It also creates procedures for assessing and regulating such activities. Section 58 requires users of coastal public property, owners and occupiers of land, coastal managers and other responsible persons to take reasonable measures to avoid causing adverse effects on the coastal environment in accordance with section 28 of the NEMA. Section 59 provides for the Minister to issue written coastal protection notices requiring measures to be taken to protect the coastal environment (measures to stop or mitigate adverse effects) and coastal access notices to ensure that no person carries out an activity that is or is likely to have an adverse effect on any South African citizen's right to gain access and enjoy the use of coastal public property. Section 60 authorises the Minister or MEC to issue notices for the repair or removal of illegal and abandoned coastal structures, or structures in a poor state of repair. Section 61 empowers the Minister or MEC to undertake such work, if necessary, and recover the costs from the person to whom the notice was addressed.

#### *CHAPTER 8: Marine and Coastal Pollution Control*

Chapter 8 establishes integrated procedures for regulating the disposal of effluent and waste into estuaries and the sea. These procedures relate to both discharge and dumping permits (see also Schedule 2 of the ICM Act). Formerly the disposal of effluent through pipelines and the dumping of waste from vessels into estuaries or the sea were controlled under different pieces of legislation by different Departments. The ICM Act intends to regulate the discharge of effluent into coastal waters from any source on land (section 69) by requiring permits to authorise such discharges. Section 70 prohibits incineration at sea and restricts dumping at sea in accordance with South Africa's obligations under international law. Section 71 provides requirements applicable to dumping permits. The ICM Act authorises the Minister to dispense with prescribed procedure in respect to dumping in emergencies (section 72). For example, vessels in distress due to mechanical failure may need to urgently dump cargo overboard. The Act requires the Minister to develop a National Action List to screen waste and other material on the basis of their potential effect on human health and the marine environment (section 73).

#### *CHAPTER 9: Appeals*

This chapter provides details of the appeal process invoked with the issuing or refusal of, coastal protection notices, repair and removal notices, or authorisations granted in terms of the ICM Act. Chapter 9 empowers the Minister or MEC either to consider an appeal personally or to appoint an Advisory Appeal Panel to advise on the appeal (section 75). The purpose of a panel is to ensure that the consideration of an appeal is informed by technical expertise, where this is required. Pending the determination of an appeal, the Minister or MEC may make an interim order considered necessary to achieve the purposes of the Act (section 76).

#### *CHAPTER 10: Enforcement*

This chapter makes provision for enforcement of the ICM Act, defines specific offences in the coastal zone, as well as stipulating the penalties that are attracted by the three categories of offences. Chapter 10 also determines the jurisdiction of courts (section 81) and gives the Minister, an MEC or a municipality the power to institute legal proceedings or take other measures in relation to coastal public property, the coastal environment or the rights of the public (section 82).

*CHAPTER 11: General Powers and Duties*

This chapter clearly defines the powers and responsibilities that are designated to the Minister and the MEC in terms of making coastal regulations and, where necessary, to take urgent action. It also deals with the coordination of enforcement actions by the three spheres of government, and the state of the coast reporting. Part 1 deals with the powers of the Minister (section 83) and of MECs (section 84) to make regulations to promote the Act's implementation and prescribes the consultative process that is to be followed when making regulations (section 85). The latter section also contains general provisions applicable to regulations. Section 89 and 91 empower the Minister and MEC to delegate certain functions to ensure effective implementation of the ICM Act.

*CHAPTER 12: Miscellaneous Matters*

This chapter deals with so-called 'transitional' matters that do not fall under any of the previous chapters. This includes a variety of matters which are necessary in order to facilitate a smooth transition from the previous management system to the ICM Act. These include provisions dealing with the continuation of existing leases on, or rights to, coastal public property (section 95), the procedures for dealing with unlawful structures on coastal public property (section 96), and the continuation of existing lawful activities requiring firstly an environmental authorisation in the coastal zone and secondly the abstraction of water from coastal waters (section 97). It also deals with other matters such as the repeal of other laws (section 98). One of the benefits of the proposed Act is that it will largely replace two existing Acts, the Sea-shore Act, (Act No. 21 of 1935), except sections assigned to the provinces, and the entire Control of Dumping at Sea Act, (Act No. 73 of 1980). Section 99 saves certain regulations and actions affected by section 98.

## 7. STAKEHOLDER-CHAPTER REFERENCE

One of the tenets of the ICM Act is the inclusion of all stakeholders (public and private sector) in the coastal management process. However, not all sections of the Act are of interest to all stakeholders and it is therefore important that stakeholders are familiar with their specific roles and responsibilities in terms of the ICM Act. The matrix below provides a quick reference guide, by key stakeholder and chapter of the ICM Act, in order to direct the reader to the most appropriate information. Coastal practitioners and managers are, however, encouraged to familiarise themselves with all aspects of this complex legal instrument. It must be noted that this matrix is presented as a guideline only.

TABLE A. Stakeholder matrix for the Integrated Coastal Management Act

STAKEHOLDERS		Chapter of the Integrated Coastal Management Act											
	Competency or sector	1	2	3	4	5	6	7	8	9	10	11	12
National Government	Environment												
	Water												
	Tourism												
	Finance												
	Forestry												
	Rural Development and Land Reform (incl. Surveyor-General and the Registrar of Deeds)												
	Mining												
	Energy												
	Transport												
	Public Works												
	Police Services												
	Health												
	Education												
	Provincial Government	Environment											
Tourism													
Economic Development													
Traditional Affairs													
Disaster Management													
Local Government													
Development Planning													
Works													
Health													
Education													
Local Government	Councillors												
	Municipal Officials												
	Traditional Authorities												
Parastatal Organisations	ESKOM												
	Tourism Authorities												
	Conservation Authorities												
	Water Authorities												
	Port Authorities												
Civil Society Sectors	Industry												
	Business community including tourism												
	NGOs/CBOs												
	Legal Fraternity												
	Environmental Practitioners												
	Surveyors												
	Scientific/Academic Community												
	Coastal property owners/developers												
	Vessel owners/operators												
	Coastal lease holders												

 Relevant Areas





# CHAPTER ONE

Interpretation, Objectives and Application of the ICM Act



This chapter deals with a number of issues *viz.* the definitions used in the ICM Act, the objectives of the Act, the duties of the state to fulfil environmental rights, application of the Act and its relationship with the NEMA, and finally the relationship between the ICM Act and other, potentially conflicting, legislation. This chapter of the ICM Act provides a list of definitions of terms that are used in or are relevant to integrated coastal management in South Africa in general. These definitions provide a common framework for interpreting the contents of the ICM Act. The definitions have therefore been included in Annexure A at the back of this Guide.

## Definitions

It is essential that the reader is familiar with the definitions provided in the ICM Act. For ease of reference these are included at the end of the Guide (see Annexure A).

## 1. OBJECTIVES OF THE ICM ACT

Section 2

The ICM Act has a number of important objectives and these are:

1.1 Determination of the coastal zone in South Africa  
Previously a number of different and often conflicting boundaries were being used to control different activities along the coast. The ICM Act clearly spells out the boundaries of the different zones and describes procedures for adjusting these.

1.2 Provision for co-ordinated and integrated management of the coastal zone

Previous management efforts in the coastal zone have lacked co-ordination, common purpose and accountability due to, among others, poorly defined responsibilities, sectoral approaches, fragmented legislation and inadequate enforcement of legislation. The ICM Act thus provides for ICM within the framework of the NEMA and this is provided for throughout all three spheres of government (see Box 1.1), in line with the principles of co-operative governance as defined by the White Paper (DEAT, 2000; see Box 1.2).

1.3 Preservation, protection, extension and enhancement of coastal public property

Coastal public property is held in trust by the State for the benefit of all South Africans, including present and future generations (inter-generational and intra-generational equity).

### Box 1.1 Spheres of Government and their political and administrative representatives

- National government: Minister of Environmental Affairs (political); Director General (administrative).
- Provincial government: MEC (political); Head of Department (administrative).
- Local government: Mayor (political); Municipal Manager (administrative).



### Box 1.2 Co-operative Governance

The building of partnerships between government, the private sector and civil society in order to ensure co-responsibility for coastal management; and to empower stakeholders to participate effectively (DEAT, 2000). It must be noted that this definition of co-operative governance is derived from the White Paper for Sustainable Coastal Development which was deemed the most appropriate. The reader is however also referred to Chapter 3 of the NEMA – Procedures for Co-operative Governance - for a holistic understanding of co-operative governance in the context of environmental management.



#### 1.4 Equitable access to coastal public property

The ICM Act ensures that the public has the right of physical access to coastal public property, as well as access to the benefits and opportunities provided by the coastal zone. While not advocating unrestricted access under any circumstances, the ICM Act describes the manner in which such access is to be managed.

#### 1.5 Giving effect to South Africa's obligations under international coastal and marine law

The ICM Act provides for compliance with international laws relating to coastal management and the marine environment.

## 2. OVERARCHING DUTIES OF THE STATE

Section 3

This section effectively empowers the ICM Act to fulfil environmental rights in the coastal environment in terms of Section 24 of the Constitution of the Republic of South Africa (1996, see Box 1.3). It also stipulates the duties of the State in regards to these new legislative powers.

Thus, in terms of Section 24 of the Constitution, and through the performance of its duties and the implementation of the ICM Act, the State is appointed to act as the trustee of the coastal zone, for the benefit of current and future generations. The State must take reasonable measures to ensure that these rights (Box 1.3) are realised in the interests of every person in South Africa. In other words, the Constitution empowers the State, through the ICM Act, to manage the coast on behalf of its citizens.

### Box 1.3 Section 24 of the Constitution

In terms of this section of South Africa's Constitution, everyone has the right:

- To an environment that is not harmful to their health or well-being; and
- To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.



## 3. APPLICATION OF THE ICM ACT

Section 4

This section provides a statement on the general applicability of the ICM Act. The ICM Act applies in the Republic of South Africa and specifically to its internal waters; territorial waters, the exclusive economic zone, and the continental shelf, as well as the Prince Edward Islands (including Marion Island). The provisions of the ICM Act that relates to dumping or incineration at sea also applies to South African vessels or aircraft outside the borders of the Republic.

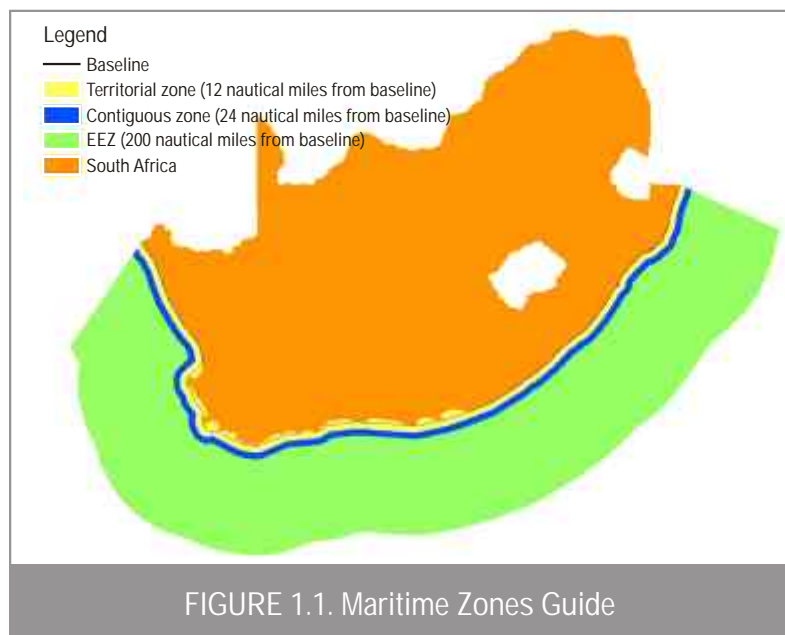


FIGURE 1.1. Maritime Zones Guide



## 4. ICM ACT, THE NEMA AND OTHER LEGISLATION

Section 6

As a specific environmental management Act (SEMA), under the over-arching umbrella of the NEMA, the ICM Act must be read in conjunction with the NEMA. Further, the resolution of any conflicts arising from the implementation of the ICM Act should be dealt with in terms of Chapter 4 of the NEMA. The ICM Act makes it clear that if the conflict relates to a coastal management issue, the ICM Act will prevail. Further, any legislation that will directly or indirectly amend the ICM Act may only be introduced by the Minister of Environmental Affairs, or after that Minister has been consulted on the proposed legislation. This is elaborated on in Figure 1.2 below.

### How does one apply the ICM Act in conjunction with the NEMA?

- The ICM Act must be read, interpreted and applied in conjunction with the NEMA in relation to coastal management;
- The ICM Act must be regarded as 'a specific environmental management Act' in terms of the NEMA section 1 (see Box 1.4); and
- Chapter 4 of the NEMA can be utilised for conflict resolution which is caused by implementation of the ICM Act (see Box 1.5).

### What if the ICM Act conflicts with other legislation?

- If conflict relating to coastal management arises between any other legislation and the ICM Act, the ICM Act prevails.

### What procedure must be followed if there is proposed legislation that may affect the ICM Act?

- Draft legislation which directly or indirectly amends the ICM Act, or provides for the enactment of conflicting, subordinate legislation may be introduced in Parliament, only by the Minister or after consultation with the Minister. Chapter 4 of the NEMA can be used for the resolution of conflict which is caused by implementation of the ICM Act (see Box 1.5).

FIGURE 1.2. The relationship between the Integrated Coastal Management Act, the National Environment Management Act (NEMA) and other legislation including potential conflict and amendment procedure

#### Box 1.4 The NEMA Definition of a Specific Environmental Management Act

An Act of Parliament that regulates a specific aspect of the environment, as defined in the NEMA, and includes any regulations or other subordinate legislation made in terms of such an Act.



#### Box 1.5 Focus of Chapter 4 of the NEMA

This chapter provides for fair decision-making and conflict management through processes of conciliation, arbitration and investigation, among others. The reader is referred to Chapter 4 of the NEMA for further information.



# CHAPTER TWO

The Coastal Zone



The term “coastal zone” lacks a universally acceptable and consistent definition. The understanding of what the coastal zone is may vary depending on the nation, organisations or individual, and may also vary in seaward and terrestrial boundary, at estuarine influences, may be a relative term or even refer to absolute boundaries that can be mapped. Be that as it may, a uniform, national definition is critical to set the stage for practical and enforceable regulations that arise from a common understanding of the boundaries of the coastal zone. This chapter of the ICM Act deals with the definition and legal status of the various spatial aspects that make up the coastal zone of South Africa. These include:

- Coastal public property;
- Coastal protection zone;
- Coastal access land;
- Coastal waters;
- Coastal protected areas;
- Special management areas; and
- Coastal set-back lines.

Without a clear and consistent understanding of the constituents of the “coastal zone”, management and regulation of human activity is fraught with uncertainty. This chapter of the ICM Act introduces new and useful concepts and firmly highlights the important management units of the coast, its ownership and the responsibility of the State (see Fig. 2.1, page 19).

## 1. COASTAL PUBLIC PROPERTY

Section 7, 11 & 12

The use of the term “coastal public property” is a result of the people-centred approach to coastal management that is promoted by the ICM Act. This is a shift away from resource-centred management and places the ownership of large areas of the coastal zone, specifically what is now known as *coastal public property*, in the hands of the citizens of South Africa. The intention of coastal public property is to prevent exclusive use of the coast by facilitating access to, and sustainable use of the productive coastal resources for the benefit of all South Africans.

The ICM Act unequivocally vests ownership of coastal public property in the citizens of South Africa. The State remains, however, the trustee of coastal public property on behalf of the citizens of the Republic. Coastal public property cannot be transferred, sold, attached or acquired by prescription, nor can the rights over it be acquired by prescription. Table 2.1 describes the areas that constitute coastal public property. It is the duty of the State as trustee to ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community, as opposed to only a few individuals or groups. The State must also act to take whatever reasonable legal and other necessary measures to conserve and protect coastal public property for the benefit of the present and future generations.

In essence, coastal public property includes a number of components such as the actual water of the coast, the land below that water, islands, the sea shore, and other state land such as Admiralty Reserve. Interesting enough, coastal public property also includes natural resources found in any of the areas mentioned above. A more detailed description of the components of coastal public property is given in Table 2.1 on page 20 of this Guide.

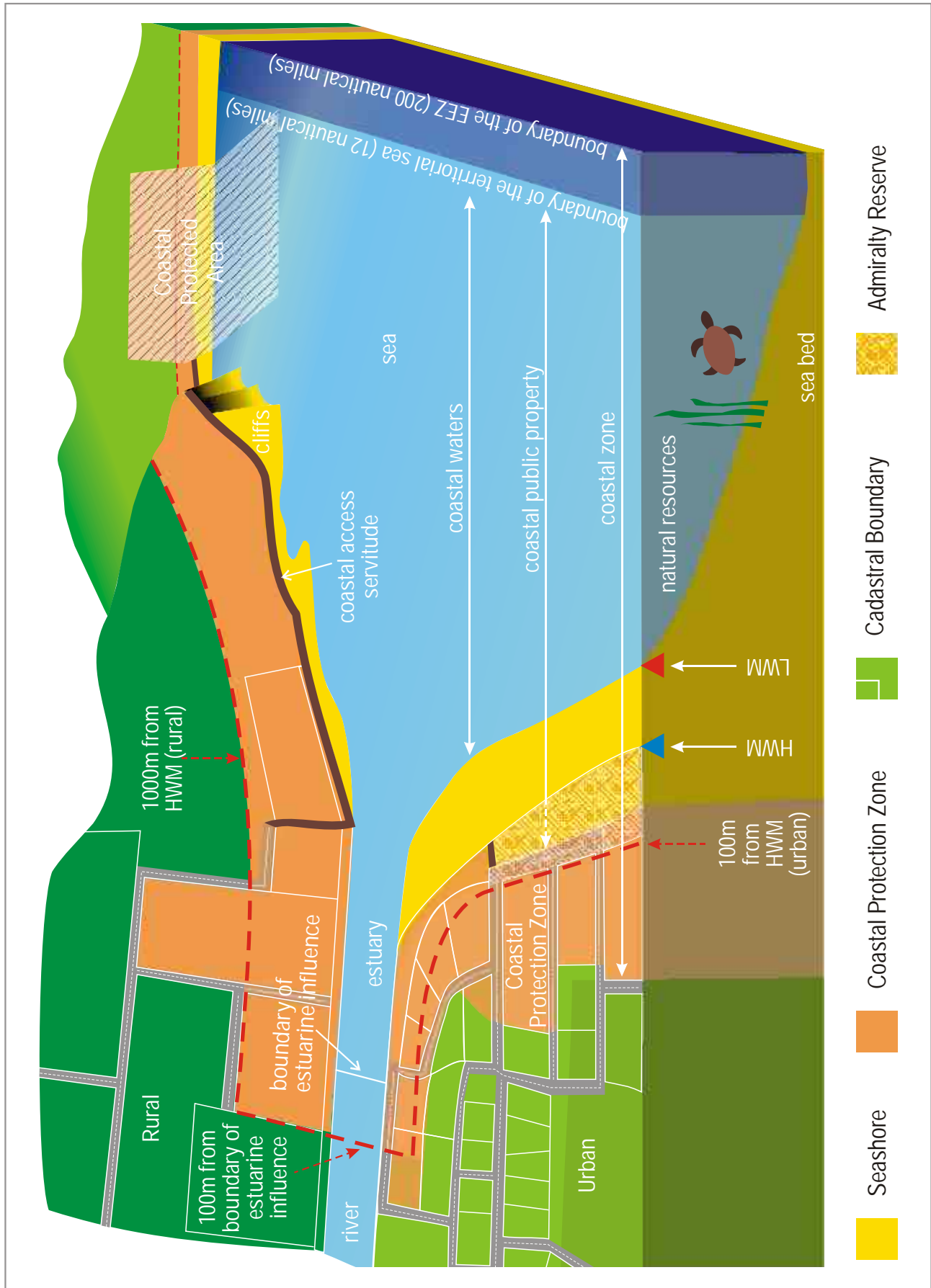


FIGURE 2.1. The Coastal Zone of South Africa.



TABLE 2.1. What is Coastal Public Property?

COASTAL PUBLIC PROPERTY INCLUDES THE FOLLOWING:	DESCRIPTION
Coastal waters	Marine waters that are part of South Africa's internal waters (all waters landward of the Maritime Zones Act baselines, and all harbours) or territorial waters (the sea within 12 nautical miles from the Maritime Zones Act baselines), including estuaries (see Figure 1.1. on page 15).
Land submerged by coastal waters	This includes land and the material underneath that land that is covered by coastal waters, or land flooded by coastal waters e.g. when a harbour or canal system is excavated.
Any island in coastal waters	Any natural or artificial island, except any part of an island that was lawfully alienated (transferred or sold) before the ICM Act took effect, or an artificially created island that is declared by the Minister not to be part of coastal public property.
The seashore	The area between the Low-Water Mark and the High-Water Mark, except parts of the seashore or coastal cliffs that were lawfully alienated in terms of the Seashore Act (Act No. 21 of 1935) before the ICM Act took effect.
Any Admiralty Reserve owned by the State	Admiralty Reserve means any strip of state-owned land adjoining the inland side of the High-Water Mark and includes land designated, on official plans, deed of grant or title deed, or other document that demonstrates title or land-use rights as "government reserve", "beach reserve", "coastal forest reserve" or other similar reserve owned by the State.
Any other State land declared as coastal public property	The Minister may declare (and withdraw any such declaration) any State owned land as coastal public property in order to achieve certain objectives. The reasons and process to do so is explained in Section 8.
Any natural resources	Any natural resources on or in coastal public property as described above, but also including the Exclusive Economic Zone or in or on continental shelf, as well as in any harbour, work or installation on coastal public property owned by an organ of State.

 Section 8

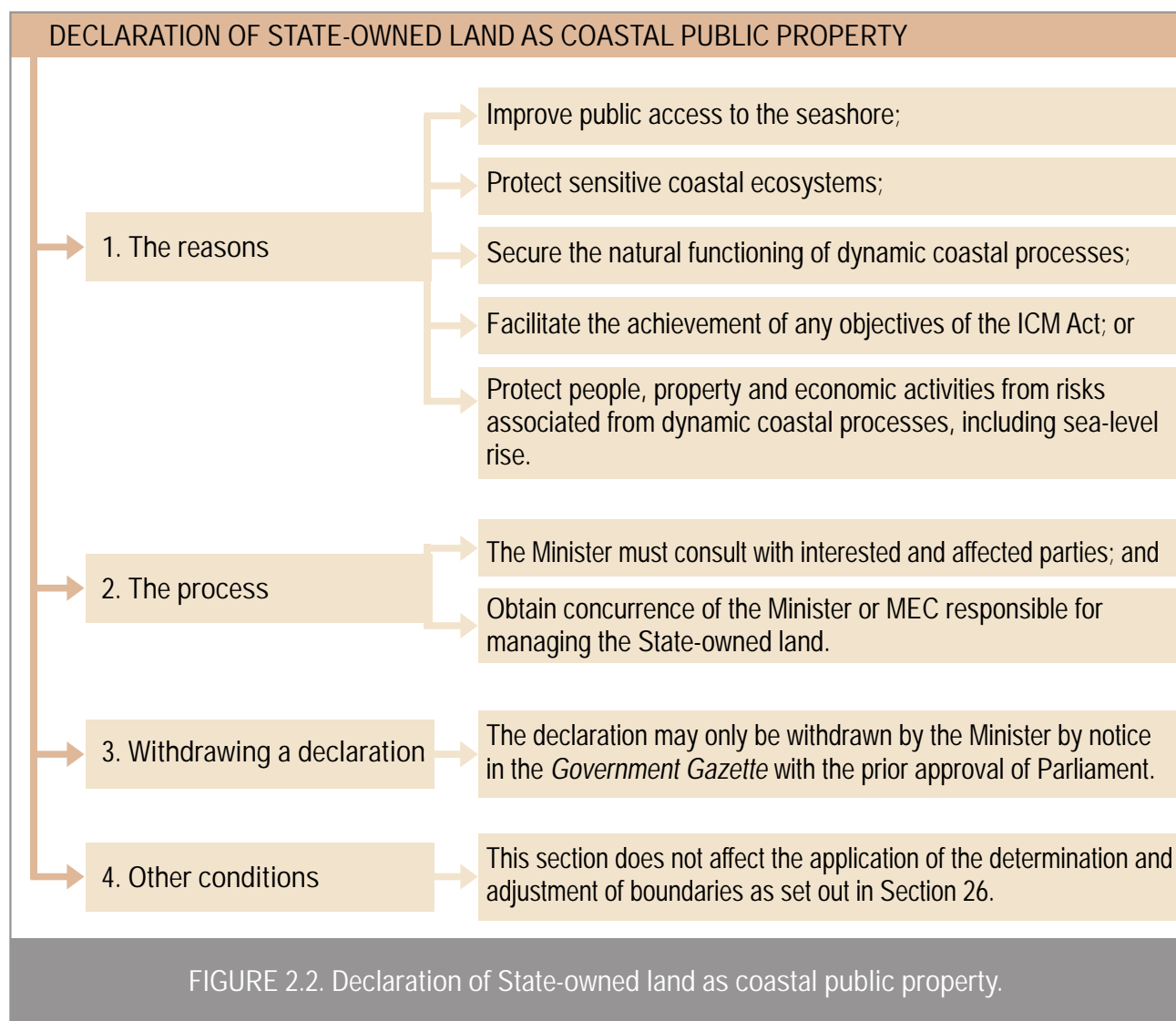
- 1.1 Extending coastal public property and designation of State-owned land as coastal public property  
Coastal public property may be extended by the Minister. State-owned land can be designated to be coastal public property through the publication of a notice in the *Government Gazette*, and may only be withdrawn from coastal public property with the prior approval of Parliament in terms of section 8(1).

 Section 9

- 1.2 What about private land and coastal public property?  
Privately owned land can be acquired by the State, through the Minister, acting with the concurrence of the Minister of Land Affairs, either by purchase agreement, exchanging it for other land, or by expropriation, if no agreement can be reached with the owner (see the Expropriation Act, Act No. 63 of 1975). The reasons for acquiring land using this section is limited to those given in Section 8(1) – see Fig. 2.2, on page 21.

 Section 10

- 1.3 Designation of state-owned land for certain purposes other than coastal public property  
Both the Minister and MEC may, by notice in the *Government Gazette*, designate state-owned land for the purpose of facilitating or achieving the same reasons put forward for extending state-owned land as coastal public property *viz.* improved access, coastal protection etc. (see Fig. 2.2. block 1). Such designated State owned land becomes part of coastal public property.



This provision allows the:

- Minister to designate state-owned land vested in the national government. He can also withdraw such designation. Both designation and withdrawal is subject to the Minister consulting with the MEC of the province concerned, the persons responsible for managing the land, and other interested and affected parties. The Minister must also obtain the concurrence of the Minister responsible for the management of that land; and
- This same process, and people or agencies involved, is repeated at provincial level if the MEC designates state-owned land for certain coastal purposes (see Fig. 2.2, block 1). The MEC must however consult with the Minister, and obtain the concurrence of the MEC responsible for the management of that land.

 Section 13

#### 1.4 Access to coastal public property

Any person is allowed reasonable access to coastal public property, and is allowed to use and enjoy it on condition that they:

- Do not negatively affect the rights of other users;
- Do not hinder the State in performing its duties as custodian; and
- Do not cause harm to the coastal environment.

This allocation does not, however, prevent the State from prohibiting or restricting access to, or use of any part of coastal public property. Access to, or use of coastal public property may be prohibited or restricted if it forms part of a protected area; or if doing so is in the interests of protecting the environment, the whole community, national security or in the national interest.

No fee may be charged for access to coastal public property without the permission of the Minister. Before the imposition of a fee, a public participation process must be followed. The restriction relating to the charging of a fee and a required consultation process does not apply to coastal public property that has been leased, or that forms part of a protected area or a proclaimed fishing harbour.



Section 14

### 1.5 The High-Water Mark

The High-Water Mark (HWM) is defined as the highest line reached by the coastal waters, but does not include any line reached as a result of abnormal floods or storm events (1:10 year storms) or estuaries that are closed to the sea.

The position of the HWM is relevant to land owners and other users of coastal public property because the boundaries of the various components of the coastal zone, as defined by the ICM Act, are created in relation to the HWM. Due to dynamic natural processes such as erosion and accretion, the position of the HWM is not static or accurate over extended time periods.

#### Box 2.1 Summary of the Land Survey Act (Act No. 8 of 1987)

The Land Survey Act was established in order to regulate the survey of land in South Africa. Section 34 of this Act provides the procedure for delineating boundaries of areas that are uncertain or undefined due to the dynamic nature of their components.

This procedure involves a written application to the Surveyor General detailing the proposed amendment to the boundary in question. The application (referred to as 'the agreement') has a number of provisions and conditions, and it is therefore necessary to refer to this section of the Land Survey Act to ensure full compliance.



If coastal land has a curvilinear (rounded or curved) boundary extending to, or a stated distance from the HWM, that boundary may be substituted by a different kind (e.g. straight line) of boundary by following the procedure described by section 34 of the Land Survey Act (Act No. 8 of 1997, see Box 2.1). This procedure of changing the position of the HWM must be agreed upon by the Minister, and the holder of real rights to the land or in land contiguous to it whose rights would be adversely affected by the replacement of the original, curvilinear boundary.

Once the boundary has been established, it must be regarded as the HWM as defined by the ICM Act, and endorsed by Register of Deeds, by proclamation.

### 1.6 What happens when the HWM moves?

If the HWM moves:

- UP, towards the land and stays there for two years, the owner of that land bounded by the HWM loses ownership rights of any land that falls below that mark. This movement of the HWM is often caused by natural processes such as sea level rise and coastal erosion.
- DOWN, towards the ocean then that land which formed part of the seashore when the ICM Act took effect (and which becomes situated inland of the HWM as a result of a change in position of the HWM) remains coastal public property). This downward movement of the HWM is often caused by beach accretion (sand build up or deposition).

This is a complex section and it is the intention of the Department of Environmental Affairs to publish a detailed information sheet covering section 14, in due course.



Section 15

### 1.7 A response to erosion or accretion on coastal public property

In simple terms, the ICM Act prohibits any acts or physical response to erosion or accretion on coastal public property. No person may construct, maintain or extend any structure, or take any other measures to prevent or promote erosion or accretion of the seashore in respect to coastal public property. Neither may any person compel or require the State, or other person to take such action, unless the erosion is caused by an intentional act or omission of that organ of state or other person.

2

## 2. THE COASTAL PROTECTION ZONE



Section 16

### 2.1 Where is the coastal protection zone?

The next component of the South African coastal zone is what is referred to as the coastal protection zone. In essence, the coastal protection zone consists of a continuous strip of land, starting from the HWM and extending 100 metres inland in developed urban areas zoned as residential, commercial, or public open space, or 1000 metres inland in areas that remain undeveloped or that are commonly referred to as rural areas. A detailed description of the areas included in the coastal protection zone can be found at the end of this section. There are however some provisions in order to justify certain adjustments to this zone.

The coastal protection zone is established to manage, regulate and restrict the use of land that is adjacent to coastal public property, or that plays a significant role in the coastal ecosystem.

The coastal protection zone consists of:

- Sensitive coastal areas, as defined by the Environment Conservation Act (Act No. 73 of 1989, section 21 [1]);
- Any part of the littoral active zone that is not coastal public property;
- Any coastal protected area, or part of such an area, which is not coastal public property;
- Any rural land unit that is situated within one kilometre (1000 metres) of the HWM which is zoned as agricultural or undetermined;
- Any urban land unit that is situated completely or partly within 100 metres of the HWM;
- Any coastal wetland, lake, lagoon or dam which is situated completely or partially within a land unit situated within 1000 metres of the HWM that was zoned for agricultural or undetermined use, or is within 100 metres of the HWM in urban areas
- Any part of the seashore which is not coastal public property (including all privately owned land below the HWM);
- Any Admiralty Reserve which is not coastal public property; and
- Any land that would be inundated (submerged or covered) by a 1:50 year flood or storm event (this includes flooding caused by both rain storms and rough seas).



Section 17

### 2.2 What is the purpose of the coastal protection zone?

The coastal protection zone is established to manage, regulate and restrict the use of land that is adjacent to coastal public property, or that plays a significant role in the coastal ecosystem. More specifically, the coastal protection zone aims:

- To protect the ecological integrity, natural character, and the economic, social and aesthetic value of the neighbouring coastal public property;
- To avoid increasing the effect or severity of natural hazards;

- To protect people, property and economic activities from the risks and threats which may arise from dynamic coastal processes such as wave and wind erosion, coastal storm surges, flooding and sea-level rise;
- To maintain the natural functioning of the littoral active zone (see Definitions, Annexure A of this Guide);
- To maintain the productivity of the coastal zone; and
- To allow authorities to perform rescue and clean-up operations.

### 3. COASTAL ACCESS LAND

 Section 18

#### 3.1 What is coastal access land?

The intention of coastal access land is to ensure that the public can gain access to coastal public property via public access servitudes. All municipalities with coastal public property must declare these servitudes within four years of the establishment of the ICM Act. They are also required to report, to the MEC, their progress towards declaring coastal access land within two years of the ICM Act coming into effect. Municipalities are required to establish coastal access land using by-laws. The designation and withdrawal processes of coastal access land, as well as the responsibilities of local municipalities in this regard, are summarised in Fig. 2.3 on page 25.

### 4. COASTAL WATERS

 Section 21

The ICM Act also has authority over coastal waters, and an organ of state that is legally responsible for controlling or managing any activity on or in coastal waters (marine waters that are part of South Africa's internal or territorial waters, and estuaries) must control or manage that activity:

- In the interests of the whole community; and
- According to South Africa's obligations (responsibilities) under international law.

### 5. COASTAL PROTECTED AREAS

 Section 22

Protected areas are legislated and managed via the National Environmental Management Protected Areas Act (Act No. 57 of 2003, see Box 2.2).

When the ICM Act comes into force, all coastal protected areas automatically form part of the coastal protection zone. The ICM Act, however, does allow the MEC to exclude, by notice in the *Government Gazette*, part of, or the entire coastal protected area from also being part of the coastal protection zone. This may, however, only be done after consultation with the management authority of the protected area, and should not negatively affect management of the area. Such an area remains a coastal protected area but is no longer considered as part of the coastal protection zone.

#### Box 2.2 The National Environmental Management Protected Areas Act (Act No. 57 of 2003)

This Act provides for the protection and conservation of ecologically viable areas which represent South Africa's biological diversity, including natural landscapes and seascapes. In addition, the Act provides for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards and for intergovernmental co-operation and public consultation in matters concerning protected areas.





### WHAT ARE THE GUIDING PRINCIPLES FOR DESIGNATING COASTAL ACCESS LAND?

- Must not conflict with protected areas, protection of the environment or the interests of the community;
- Must be shown on the municipal zoning scheme;
- Must also be incorporated into municipal Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs);
- Must be in line with national and applicable provincial coastal management programmes;
- Must be in line with other applicable national and provincial legislation;
- Cannot be located within a harbour, defence or other strategic area without permission of relevant Minister; and
- Should be withdrawn if inappropriately situated.

### WHAT IS THE PROCESS REQUIRED TO DESIGNATE OR WITHDRAW COASTAL ACCESS LAND?

- The Municipality concerned must:
- Assess environmental impacts of the designation or withdrawal;
  - Consult with interested and affected parties (I & APs) in terms of Section 53; and
  - Give notice to the owner of the land regarding the intended designation or withdrawal of designation.

### WHAT ARE THE MUNICIPAL RESPONSIBILITIES WITH REGARD TO COASTAL ACCESS LAND?

- Signpost entrances to coastal access land;
- Control of use of activities on that land;
- Protect and enforce the rights of the public to use such access;
- Maintain the land to ensure continued public access;
- Promotion of access via the provision of appropriate amenities such as parking, toilets, boardwalks, etc;
- Ensure that coastal access land does not cause adverse environmental effects;
- Remove inappropriate access that is causing adverse environmental effects that cannot be prevented or mitigated;
- Describe coastal access land in municipal coastal management programmes and in any spatial development framework;
- Report progress, to the MEC, on the measures to implement this section within two years of the ICM Act coming into force; and
- Perform any other actions that may be prescribed.

FIGURE 2.3. Designation of, process and responsibilities in regard to coastal access land.

## 6. SPECIAL MANAGEMENT AREAS

 Section 23 & 24

The ICM Act also provides for the declaration of special management areas that are wholly or partially in the coastal zone. These areas can only be declared (and withdrawn) by the Minister and such declaration may prohibit certain activities from taking place within such a management area. Before the Minister can declare a special management area, he or she must consult with the MEC of the province and then make the declaration by notice in the *Government Gazette*. The Minister may appoint a manager, with appropriate expertise and defined powers and duties, to manage this area. A special management area can be declared if environmental, cultural or socio-economic conditions in the area require it to:

- Achieve the objectives of a coastal management programme;
- Facilitate the management of coastal resources by local communities;
- Promote sustainable livelihoods; or
- Conserve, protect or enhance coastal ecosystems and biodiversity.

## 7. COASTAL SET-BACK LINES

 Section 25

The ICM Act makes provision for the establishment of coastal set-back lines to be drawn up. These prescribed boundary lines are one of the many new and important tools that the Act offers coastal managers and decision makers. Coastal set-back lines may be established for various reasons and there may be more than one set-back line in any given area. For example, one set-back line may be an anticipated erosion setback line, while another may relate to aesthetics and control the height of buildings to protect a specific scenic landscape. Set-back lines will assist in controlling development along an ecologically sensitive or vulnerable area, or any area that poses a hazard or risk to humans (DEAT, 2000). The coastal set-back line may even be situated wholly or partially outside the coastal zone. In effect, coastal set-back lines prohibit or restrict the construction, extension or repair of structures that are either wholly or partly seaward of the line. The intention of the coastal set-back line is to protect or preserve:

- Coastal public property such as beach amenities and other infrastructure such as parking ;
- Coastal private property such as private residences and business properties;
- Public safety in the face of extreme climate and other natural events;
- The coastal protection zone as described in Section 16 & 17; and
- The aesthetics or “sense-of-place” of the coastal zone.

The establishment of coastal set-back lines is a provincial responsibility but the MEC can only declare such a set-back line after consultation with municipalities and interested and affected parties (I&APs). In other words, I&APs may influence where this line should be drawn based on local conditions and knowledge. The MEC must communicate the proposed coastal set-back line by publishing regulations in the *Provincial Gazette*. Once the regulations have been published, the local municipality of that area must delineate the coastal set-back line on the map or maps that form part of the municipal zoning scheme. This is done so that the public may determine the position of the setback line in relation to existing cadastral boundaries.

# CHAPTER THREE

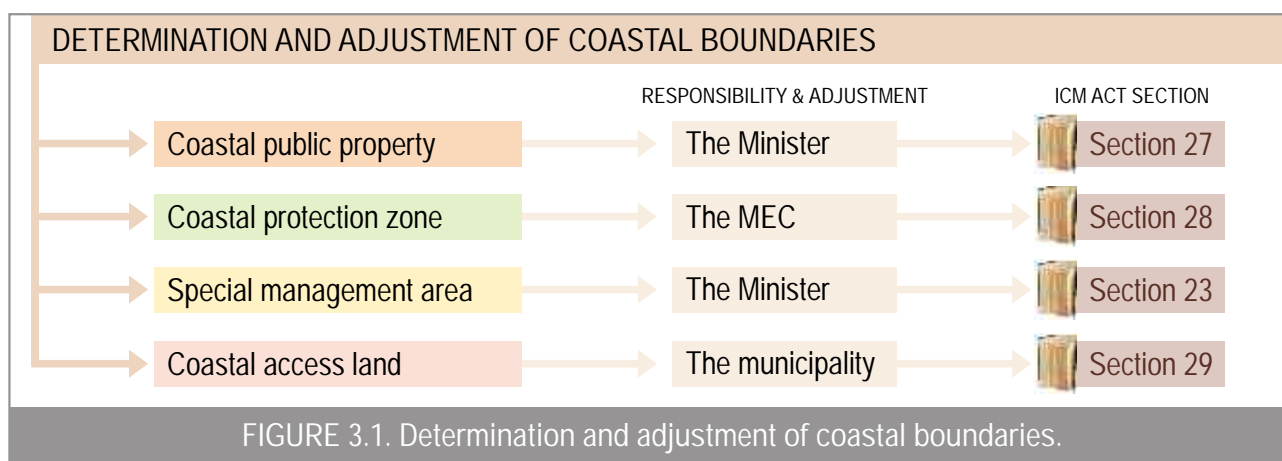
Boundaries of Coastal Areas



Defining coastal boundaries is a difficult task faced by all countries that aim to develop and implement integrated coastal management (DEAT, 2000). As evident from the provisions of Chapter 2, coastal boundaries are required to delineate the various components that make up the coastal zone of South Africa. This chapter describes the process by which coastal boundaries must be determined and adjusted and provides instructions for the delineation of these boundaries on both zoning maps and formal title deeds. Distinction is made between coastal boundaries and other territorial boundaries, which are governed by other legislation.

## 1. DETERMINATION AND ADJUSTMENT OF COASTAL BOUNDARIES Section 26

The ICM Act makes provision for a number of coastal boundaries to be declared (see Chapter 2). The person or body who is responsible for its determination and adjustment are outlined in Fig. 3.1 below. The communication of the determination and adjustment of boundaries is by notification in either the *Government Gazette* (Minister) or *Provincial Gazette* (MEC and municipality). The Minister may, in making adjustments to the coastal public property, also make any consequential changes to an adjoining coastal boundary of the coastal protection zone or coastal access land.



These boundaries may need to be adjusted due to a variety of reasons such as the desire to extend coastal public property, the dynamic nature of coastal processes or because of disputing claims over the position of a coastal boundary. The ICM Act provides for the above scenarios as well as additional possible situations.

Coastal boundaries may be determined or adjusted if they:

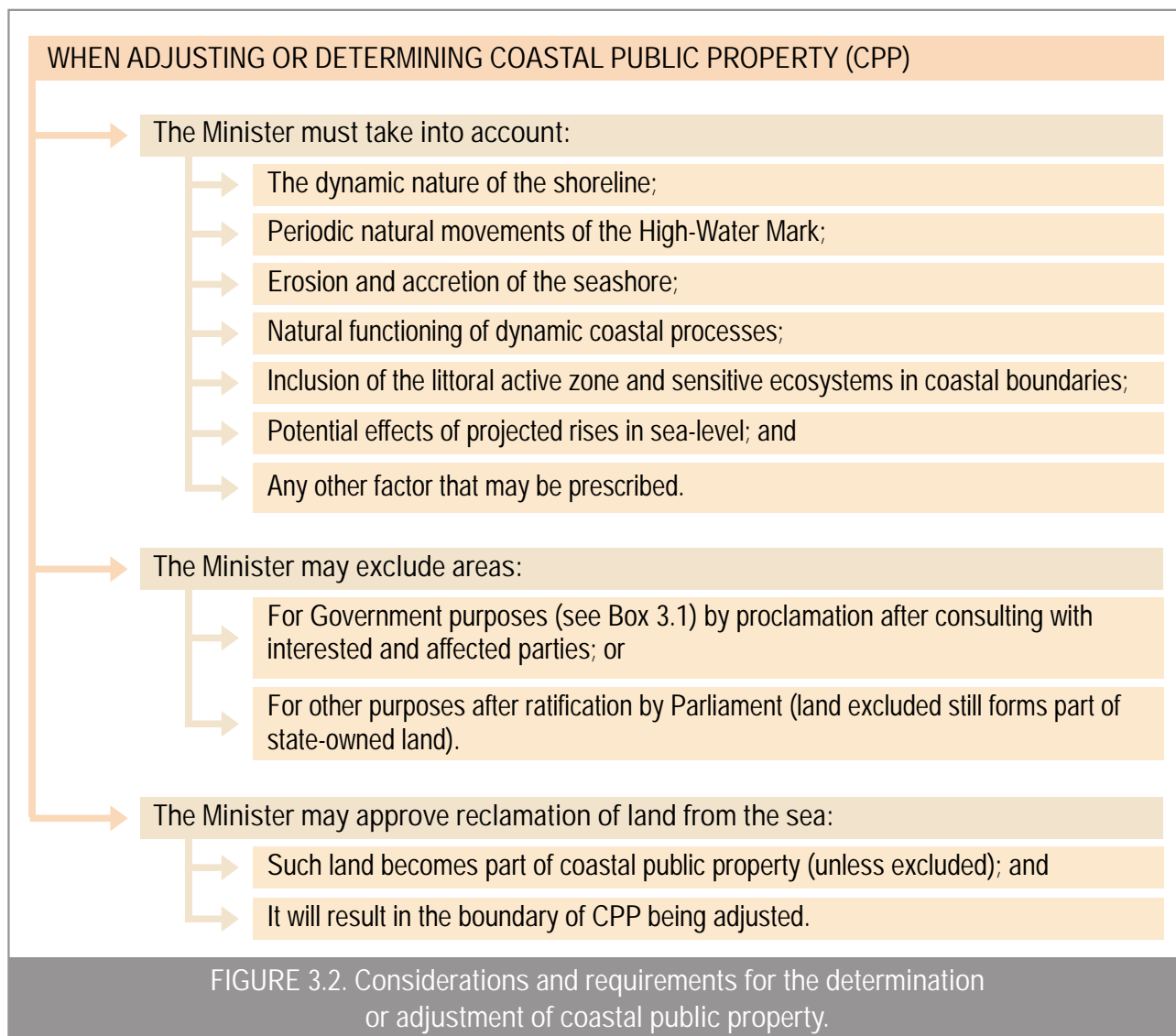
- Are uncertain or undefined;
- Are subject to competing claims;
- Have shifted due to natural or artificial processes; or
- If adjustment or determination will better achieve the ICM Act objectives.

The requirements that must be met prior to the determination or adjustment of coastal boundaries are that authorities must:

- Consider the concerns and representations of interested and affected parties (I&APs);
- Consider the interests of any local community affected by the boundary;
- Take note of any applicable coastal management programme;
- Comply with any other requirements that may be prescribed; and
- Inform the affected municipality in order to reflect the boundary change on zoning maps.



A more detailed description of the considerations and requirements for the determination and adjustment of the four types of coastal boundaries are illustrated in Figure 3.2 below and Figures 3.3 and 3.4 on page 30.



**Box 3.1** Definition of Government purposes in the context of the ICM Act

Government purposes means the exercise of functions of an organ of state in the national interest or in the interest of national security but does not include donation, leases of more than 20 years or alienation by that organ of state.





### WHEN ADJUSTING OR DETERMINING THE COASTAL PROTECTION ZONE

The MEC must take into account:

- That he or she may not determine or adjust the coastal protection zone in a manner that changes the boundaries of coastal public property;
- That he or she may include land not adjacent to coastal public property;
- The purposes for establishment of the coastal protection zone;
- Incorporation of land that is not coastal public property into the coastal protection zone that should be maintained or restored to a natural/semi-natural state;
- The need to avoid risks posed by natural hazards;
- The potential for increase in the number and severity of natural disasters and the need for preventative measures;
- Allowance for the movement of the High-Water Mark;
- The importance of protecting the adjacent inland boundary of coastal public property by demarcating a continuous strip of land; and
- Any other factor that may be prescribed.

FIGURE 3.3.

Considerations and requirements for the determination or adjustment of the coastal protection zone.

### WHEN ADJUSTING OR DETERMINING COASTAL ACCESS LAND

The municipality must take into account:

- The kind of access required (pedestrians, vehicles, vessels, other access, etc);
- Potential adverse effects of public access (including adverse effects from infrastructure, vehicles, increased numbers of people);
- The need for parking, recreational and ablution facilities;
- Existing rights of way, public servitudes or customary means of gaining access to the seashore and coastal waters;
- The need to maintain coastal protected areas; and
- The importance of not unreasonably restricting land owners' rights.

FIGURE 3.4. Considerations and requirements for the determination of coastal access land.

## 2. ENTRY ONTO LAND

 Section 30

In terms of the practical issues involved in adjusting coastal boundaries such as collection of data and conducting of surveys and environmental assessments, the Minister, MEC or municipality may authorise anyone to enter, without a warrant, privately owned land (excluding residences) after giving the owner reasonable notice. Such a person must be able to prove their identity and authorisation on demand. If the owner of the property refuses them entry, application may be made to the High Court for an appropriate order. If any damage occurs to the property as a result of such entrance, the Minister, MEC or municipality must financially compensate the owner of the property.

### 3. MARKING COASTAL BOUNDARIES ON ZONING MAPS



Section 31

As with a coastal set-back line, it is the responsibility of the local municipality within whose area of jurisdiction the boundary is situated to delineate coastal boundaries on the maps that are part of its zoning scheme. This is necessary in order to enable the public to determine the position of any coastal boundary in relation to existing cadastral boundaries.

### 4. THE REGISTRAR OF DEEDS AND COASTAL BOUNDARIES



Section 32

It is the responsibility of the Minister, MEC or municipality (as may be appropriate) to notify in writing the relevant Registrar of Deeds when a determination or adjustment to a coastal boundary is made. Such notification must include a description of the land involved and must be accompanied by a diagram signed by a surveyor who is approved in terms of the Land Survey Act. The relevant Registrar of Deeds is then required to make note of such determination, adjustment or demarcation.

3

# NOTES



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# CHAPTER FOUR

Estuaries



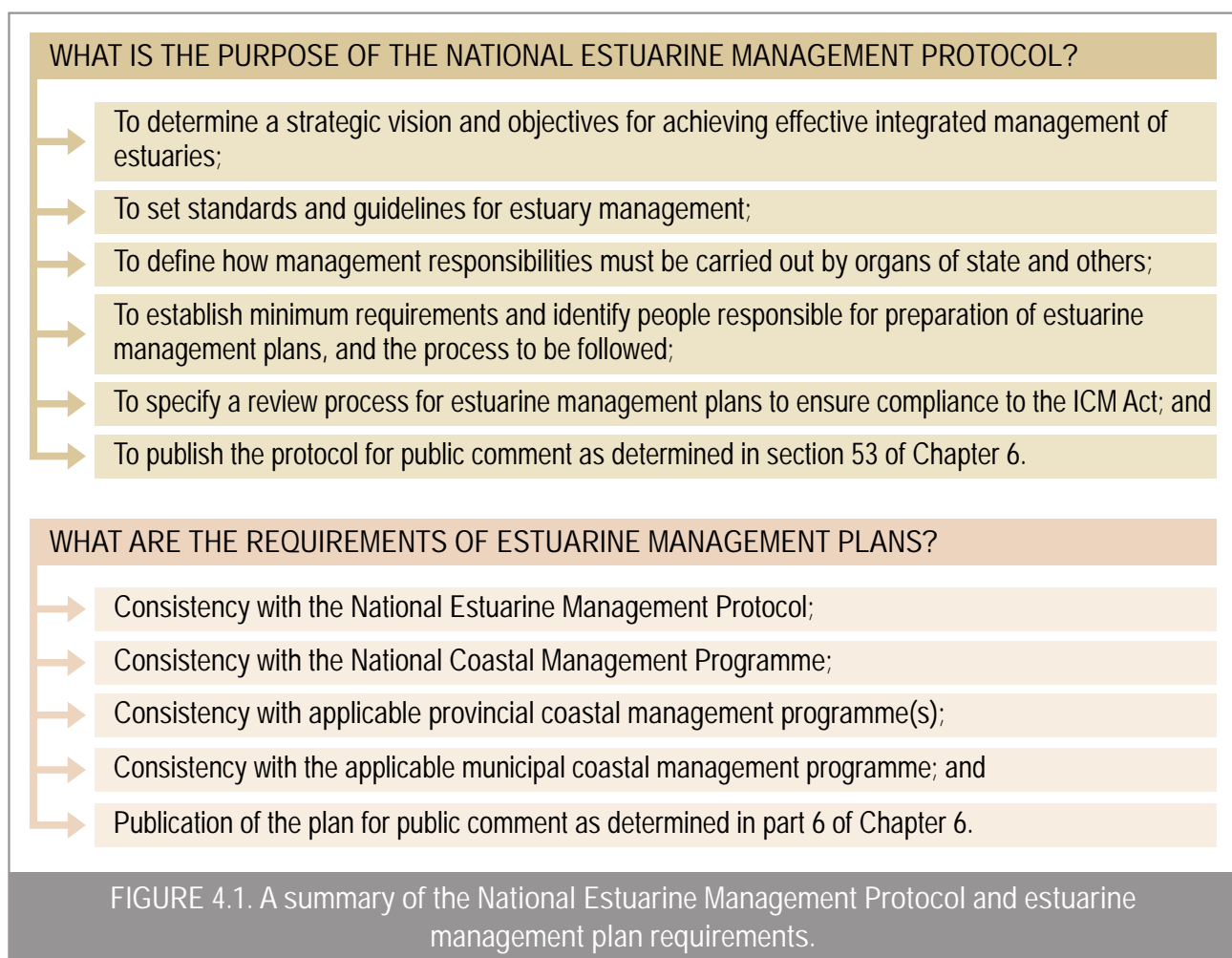
Estuaries are referred to as any body of water that has a connection to the ocean, and is either permanently or periodically open to the sea. Estuaries are tidal and their reach is determined by the rise and fall of the water level at spring tides, and when the water course is open to the sea. Estuaries are highly productive ecosystems, and provide a number of important ecological functions that yield significant benefits to people. They are, however, sensitive to human impacts (DEAT, 2000). This chapter details the proposed integrated and improved management of estuaries in South Africa by means of a National Estuarine Management Protocol as well as individual management plans for individual estuaries.

## 4

## 1. ESTUARINE MANAGEMENT

 Section 33 & 34

Estuaries in South Africa must be managed in a co-ordinated and efficient way, in accordance with a National Estuarine Management Protocol, which must be developed by the Minister in conjunction with the Minister responsible for water affairs, within four years of the commencement of the ICM Act. A summary of the National Estuarine Management Protocol requirements as well as estuarine management plans are shown below (Figure 4.1).





# CHAPTER FIVE

## Institutional Arrangements



One of the pillars of successful integrated coastal management is the establishment of effective institutional arrangements to underpin both cooperative government and cooperative governance. Co-operative governance is a system that allows government and civil society to communicate and contribute to shared coastal management objectives, and must be well-organised and widely representative of all coastal stakeholders. This chapter of the ICM Act details the institutional arrangements that would, once implemented, contribute to co-operative coastal governance in South Africa. These arrangements are made at national, provincial and municipal government levels, and the embodiment of co-operative coastal governance is vested in what will be known as *coastal committees*. The ICM Act provides for the permissive, i.e. if so required, establishment of municipal coastal committees, but at national and provincial level however, the Minister and MECs of coastal provinces are directed to establish National and provincial coastal committees, respectively. Provincial coastal committees must be established within one year of the commencement of the ICM Act. However, no time-frames are stipulated for the establishment of the National Coastal Committee. The functions, composition and other practical arrangement of proposed coastal committees are described below.

## 1. NATIONAL COASTAL COMMITTEE

 Section 35-37

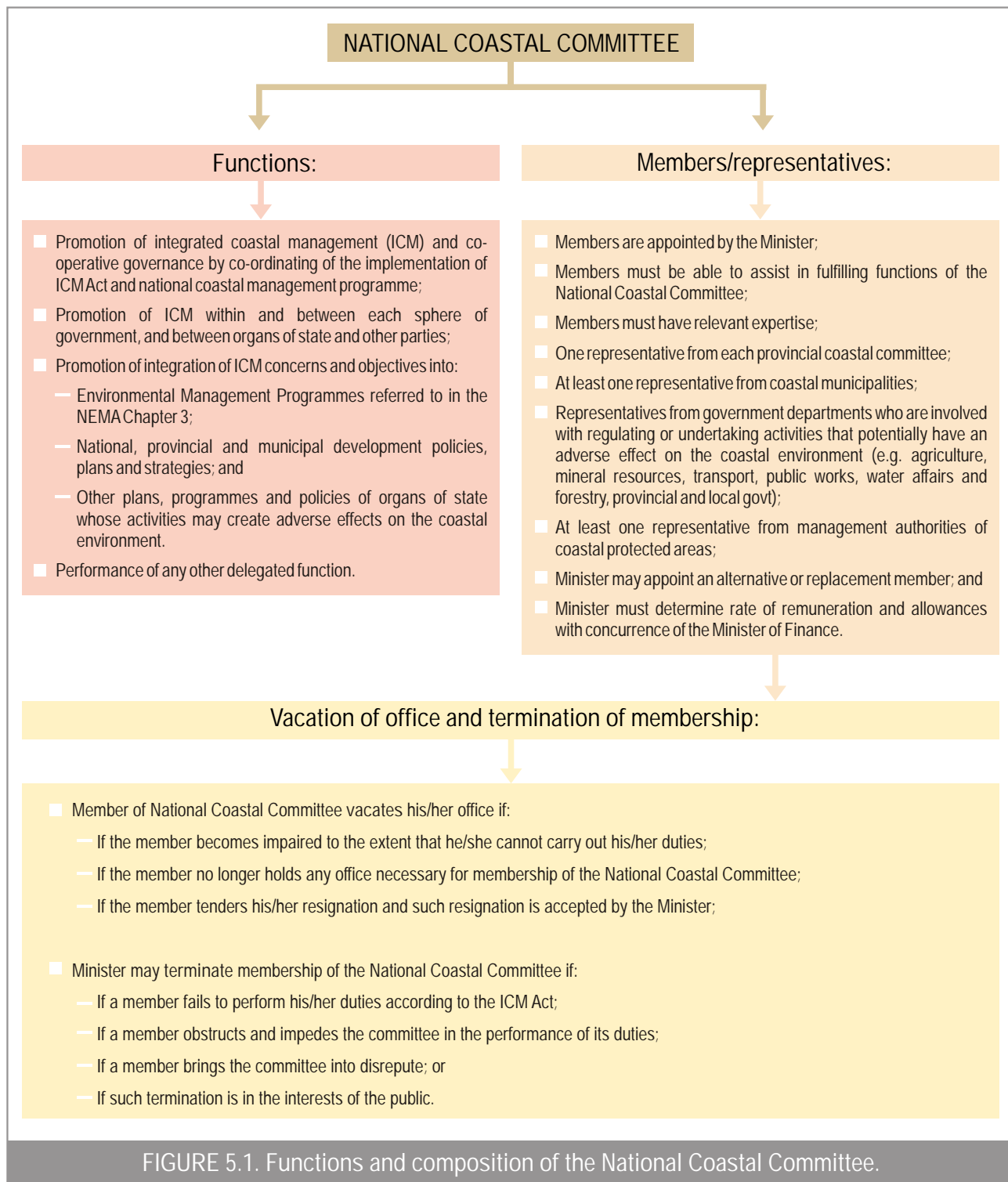
The National Coastal Committee is established by the Minister, and its powers determined by notice in the *Government Gazette*. It is supported administratively by the National Department of Environmental Affairs. The functions, appointment and composition, and vacation of office and termination of membership of the National Coastal Committee are described in Fig. 5.1 overleaf.

## 2. PROVINCIAL LEAD AGENCIES

 Section 38

The Premier of each coastal province must identify a lead agency (an organ of state) that is responsible for the co-ordination, monitoring and implementation of the provincial coastal management programme, monitoring the state of the environment in the coastal zone, and identifying relevant trends and priority issues. The lead agency for coastal management is directly responsible to the MEC. It is the responsibility of the Premier of each coastal province to designate such a lead agency within two months of the commencement of the ICM Act, and to ensure that there is at all times a lead agency for ICM in the province. The Premier may assign some of the functions below to any other organ of state, other than the lead agency. Specific responsibilities of the provincial lead agency are:

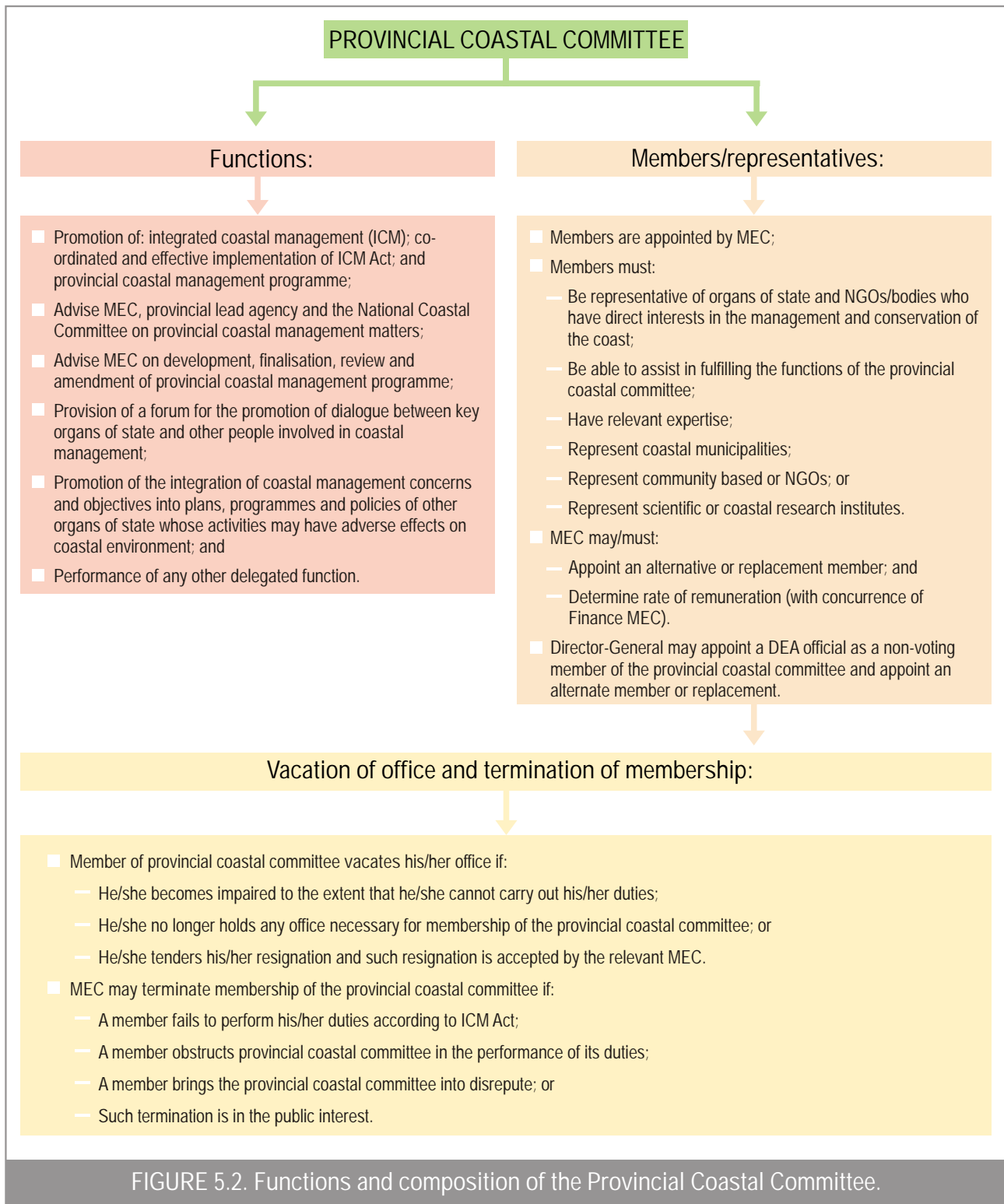
- Co-ordinating the implementation of the provincial coastal management programme;
- Monitoring coastal management in the province;
- Monitoring the state of the coastal environment and relevant trends affecting that environment;
- Identification of provincial priority issues;
- Co-ordination of the provincial state of the coast report (section 93 of the ICM Act);
- Provision of logistical and administrative support to the provincial coastal committee;
- Reviewing of reports relating to determinations or adjustments of boundaries under Chapter 3 of the ICM Act or policies that may impact the coastal zone;
- Promotion of training, awareness and education programmes relating to the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources;
- Devising measures to monitor and enforce compliance with the ICM Act; and
- Performing any other functions assigned to it by the Minister or MEC.



### 3. PROVINCIAL COASTAL COMMITTEES

Section 39-41

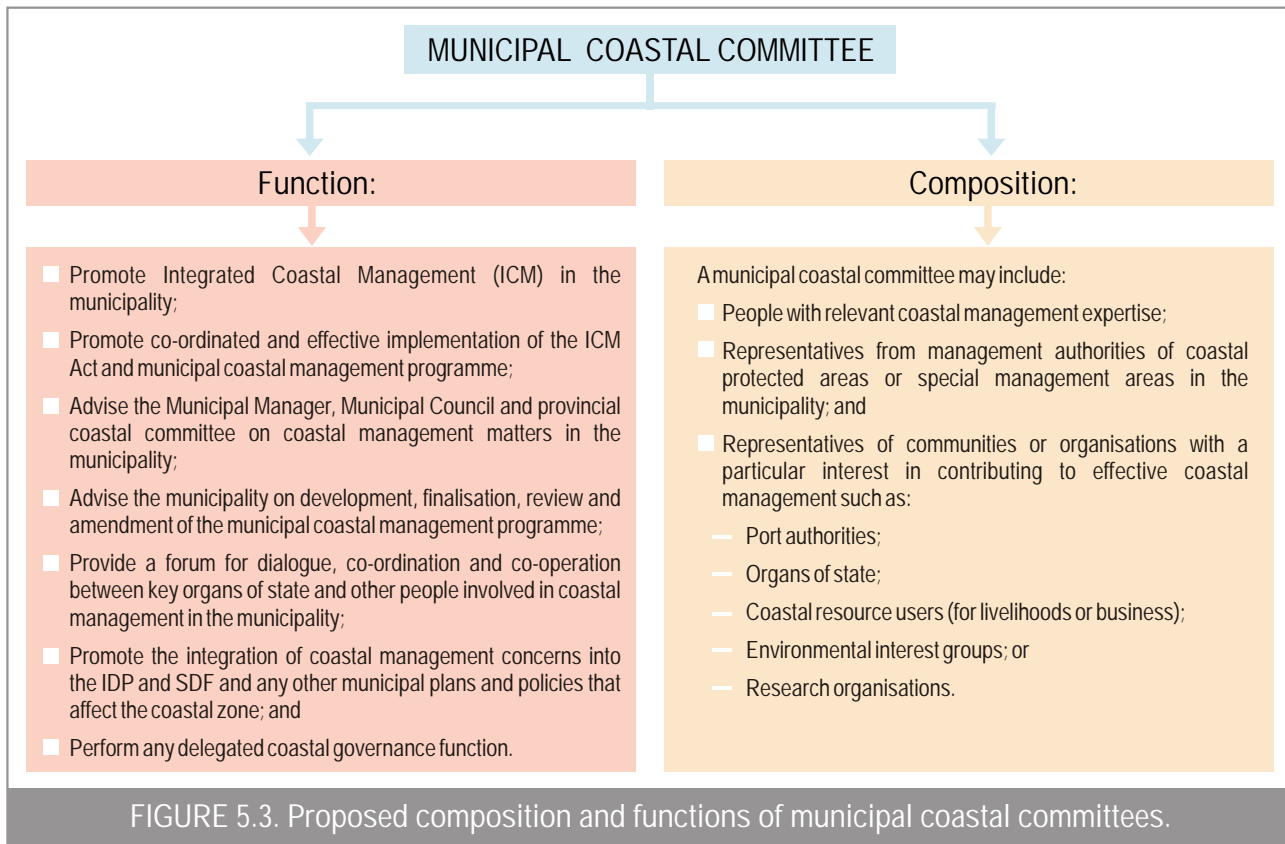
The MEC of each coastal province must establish a provincial coastal committee for the province within a year of the commencement of the ICM Act. The functions, appointment and composition, and vacation of office and termination of membership of office for the provincial coastal committee are summarised in Figure 5.2 overleaf.



## 4. MUNICIPAL COASTAL COMMITTEES

Each metropolitan, district, or local municipality which has jurisdiction over the coastal zone may establish a municipal coastal committee. The proposed composition and functions of municipal coastal committees are presented in Figure 5.3 on page 39.





## 5. VOLUNTARY COASTAL OFFICERS



Section 43

Any member of the public who has appropriate skills or expertise may be appointed as a voluntary coastal officer by the MEC of a coastal province. 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.

The MEC must:

- Prescribe and define the powers and duties of voluntary coastal officers;
- Define the responsibilities and duties of each voluntary officer in a letter of appointment; and
- Issue each voluntary coastal officer with an identity card which must be produced at the request of the public when performing assigned powers.





# CHAPTER SIX

Coastal Management



This chapter of the ICM Act introduces coastal management programmes for achieving integrated and co-ordinated coastal management. These must be developed by the national, provincial and municipal spheres of government. In order to achieve co-ordinated coastal management, this chapter requires other plans to be aligned and consistent with coastal management programmes. The last three sections of this chapter deal with the inclusion of the public in decision-making (public participation), the review of coastal management programmes, and coastal planning schemes. This chapter also deals with coastal planning schemes, intended to facilitate the attainment of coastal management objectives, and is another management tool that is required by the ICM Act. A more detailed interpretation of Chapter 6 is provided below.

## 1. COASTAL MANAGEMENT PROGRAMMES (CMPs)

Section 44-50

### 1.1 Preparation and Adoption

The ICM Act is a legal document that provides the “letter of the law”, but still requires other, more practical “tools” to achieve integrated coastal management in provinces and municipalities. One of the tools that are prescribed by the ICM Act is what is known as a coastal management programme (CMP). The intention of the Act is that CMPs are established in all spheres of government starting with a National CMP. The provincial CMPs must be established to be consistent with the National CMP, and the municipal CMPs must be established to be consistent with both the provincial and National CMPs. This hierarchical relationship allows for the development of a strategic and overarching National CMP followed by CMPs that include increasing levels of local management detail. This arrangement also accommodates management responses that are sensitive to the natural, social and economic differences along the South African coastline. The process and timing for the preparation and adoption of CMPs is depicted in Figure 6.1 below.

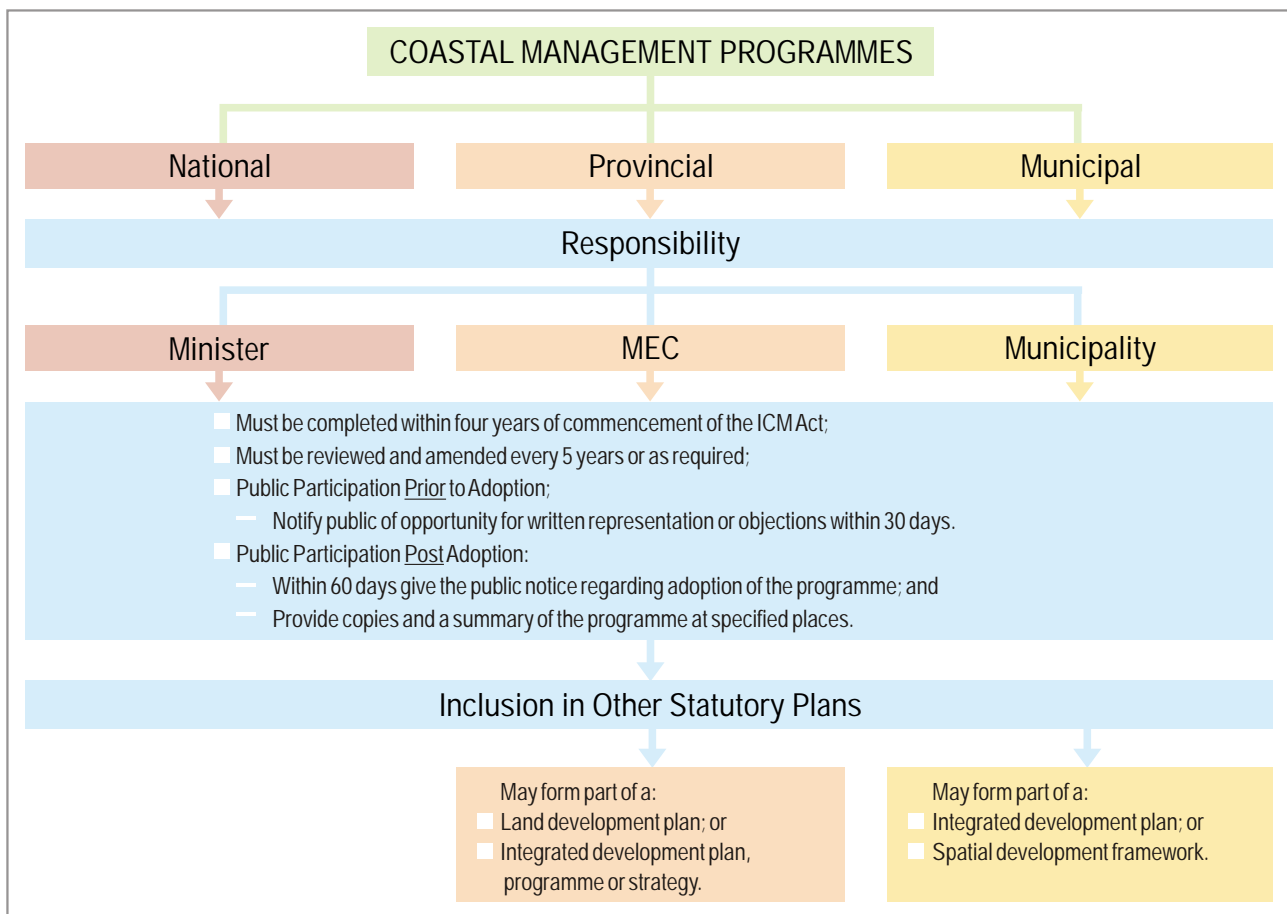


FIGURE 6.1. Responsibilities and processes for the development of coastal management programmes.



## 1.2 Content of the CMPs

The ICM Act requires that CMPs must meet a number of requirements before formal acceptance of such programmes. These requirements are listed in Table 6.1 below. It should be noted that additional requirements may be prescribed and CMPs will have to take these into account.

TABLE 6.1. Content requirements for the coastal management programmes (CMPs) of the three spheres of government. Grey shading refers to shared requirements between at least two CMPs.		
National	Provincial	Municipal
(1) All programmes must be a policy directive on integrated coastal management that provides for a coordinated, integrated and uniform approach by government departments (organs of state), NGOs, the private sector and local communities.		
	This programme must be consistent with the National CMP and the National Estuarine Management Protocol.	This programme must be consistent with the National and provincial CMPs and National Estuarine Management Protocol.
(2) All programmes must contain, as appropriate, either a national, provincial or municipal vision for coastal management including the sustainable use of resources.		
(3) All programmes must contain, as appropriate, either national, provincial or municipal objectives for coastal management.		
(4) Priorities and strategies to achieve the National Coastal Management objectives.		
	(i) Achieve the provincial coastal management objectives of the province; and (ii) Develop priorities and strategies to develop estuarine management plans for estuaries in the province.	Achieve the provincial and local coastal management objectives of the municipality, and to address: <ul style="list-style-type: none"> <li>(i) The high percentage of vacant plots and the low occupancy levels of residential dwellings;</li> <li>(ii) Equitable designation of zones for mixed-cost housing taking into account the needs of previously disadvantaged people;</li> <li>(iii) Coastal erosion and accretion; or</li> <li>(iv) Coastal access.</li> </ul>
(5) All programmes must include performance indicators to measure progress with the achievement of relevant coastal management objectives.		
(6) National norms and standards for the management of the coastal zone generally as well as specific components therein.	Although not explicit in the ICM Act it follows that the provincial and municipal CMPs must implement national norms and standards.	
(7) Framework for co-operative governance that identifies the responsibilities of different organs of state, including their responsibilities in relation to marginalised or previously disadvantaged communities that are dependent on coastal resources for their livelihood and facilitates co-ordinated and integrated coastal management.	Although not explicit in the ICM Act it follows that the provincial and municipal CMPs must implement the framework for co-operative governance.	
(8) Although the Act is silent on the need for a programme of projected expenditure, it follows that such a programme of expenditure will be desirable.	May include a programme of projected expenditure and investment by the provincial and municipal government in order to implement the CMPs.	
		A municipal CMP may also include a: <ul style="list-style-type: none"> <li>(i) Description of specific areas within the coastal zone that require special management and strategies; and</li> <li>(ii) Estuarine management plans.</li> </ul>

### 1.3 Municipal by-laws

Once a municipality adopts a CMP it may prepare by-laws to provide for the implementation, administration and enforcement of such a programme.

## 2. COORDINATION AND ALIGNMENT OF PLANS AND CMPs

 Section 51-52

Other management tools such as integrated development plans (IDPs) and environmental management plans/programmes (EMPs) prepared in terms of Chapter 3 of the NEMA must be aligned and give effect to both the National CMP and provincial CMPs (see section 51).

### 2.1 Ensuring consistency between CMPs and other statutory plans

Consistency in this instance means that there should not be conflict between CMPs and other statutory plans (see Box 6.1 for a description of statutory plans, and the associated legislation which governs them).

To ensure consistency of these programmes, implementing agencies are tasked as follows:

- The national Minister needs to ensure consistency between the National CMP and other statutory plans adopted by national organs of state;
- The provincial MEC must ensure consistency between the provincial CMP and other statutory plans adopted by either national or provincial organs of state; and
- The Municipality must ensure that its IDP and SDF are consistent with other statutory plans adopted by national and provincial organs of state.

If there is conflict between CMPs and other statutory plans, the Minister, MEC or municipality must resolve the issue with the government department responsible for the conflicting statutory plan. If a resolution cannot be achieved, the conflict must be dealt with in terms of Chapter 4 of the NEMA (see Box 6.2). The ICM Act is firm on the resolution of conflict in favour of the overall objectives of the ICM Act (see section 6).

#### Box 6.1 Description of Statutory Plans

'Statutory Plans' refers to any legally adopted plan, policy or programme that may have legal overlap with management programmes. Examples of statutory plans include:

- Environmental implementation or environmental management plan (National Environmental Management Act (Act No. 107 of 2008 [NEMA]));
- Integrated development plan (Local Government: Municipal Systems Act (Act No. 32 of 2000 [MSA]));
- National biodiversity framework or bioregional plan [National Environmental Management: Biodiversity Act (Act No. 10 of 2004)];
- Provincial or municipal strategic environmental assessment (NEMA);
- Provincial economic development strategy;
- National estuarine management plan (ICM Act);
- Municipal spatial development framework (MSA); or
- Municipal land use management system (MSA).



## 3. PUBLIC PARTICIPATION

 Section 53

This section sets out the public participation or consultation process that must be followed if a section of the ICM Act specifically requires such a process. This is in accordance with the principles of co-operative governance as set out in the NEMA of South Africa. The public consultation process generally includes three steps viz. consultation with the appropriate government

#### Box 6.2 Summary of Chapter 4 of the NEMA

Chapter 4 of the NEMA provides predominantly for fair decision-making and conflict management through processes of conciliation, arbitration and investigation, among others.



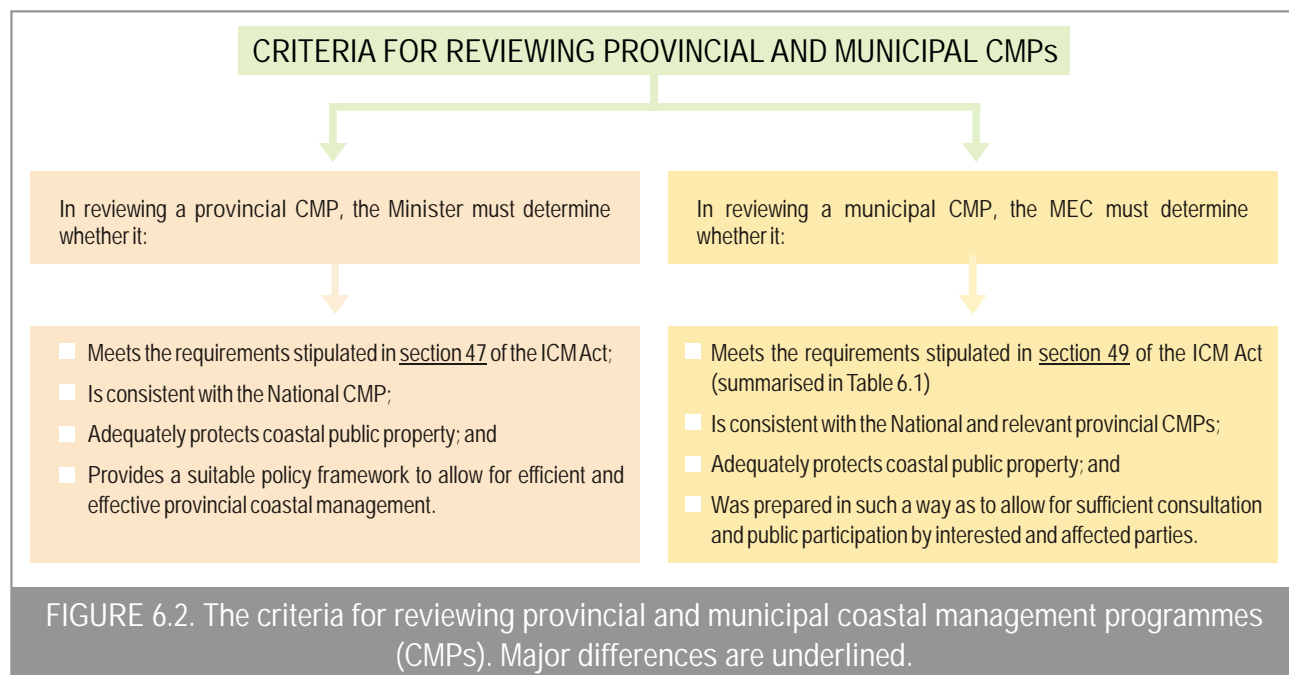


officials (generally the Minister, MEC or municipal official), reasonably accessible publication or broadcasting of intent, and finally, notification in the *Government Gazette*. The notice in the *Government Gazette* must provide sufficient information, in order that the public can submit written representation or objection to proposed actions within a period of 30 days.

## 4. REVIEW OF COASTAL MANAGEMENT PROGRAMMES

 Section 54-55

Section 54 of the ICM Act gives the Minister the power to review any provincial CMP, at any time, while similarly Section 55 empowers the MEC, to review, at any time, any municipal CMP. The Minister may also request that a MEC review a municipal CMP. Should the MEC be unable or unwilling to do so within a reasonable time period, the Minister may review such a municipal CMP. The criteria for reviewing CMPs are provided in Fig. 6.2.



Should the Minister decide that a provincial CMP does not comply with the conditions above, he or she must notify the MEC of the relevant province to amend or replace the programme within a reasonable period of time. The MEC must then follow the same procedure as if he or she is preparing and adopting a programme for the first time. The amended or replaced CMP may then only be adopted with the consent of the Minister.

The ICM Act requires the MEC to consider the advice of a provincial coastal committee (see Section 39 of ICM Act and Fig. 5.2 of this guide), regarding the content of any municipal CMP. If after doing so, the MEC determines that the municipal programme does not meet all the requirements mentioned in the table above, the MEC must notify the relevant municipality to amend or replace the programme within a reasonable time period. The municipality must then follow the same procedure as if they are preparing and adopting a programme for the first time. The amended or replaced CMP may only be adopted with the consent of the MEC.

## 5. COASTAL PLANNING SCHEMES

 Section 56-57

A coastal planning scheme is another tool which may be used to achieve coastal management objectives. A coastal planning scheme defines areas within the coastal zone or coastal management area which may be exclusively or mainly used for a specified purpose or activity. A planning scheme may also restrict or prohibit certain activities in, or uses of a specified zone. As consistency is one of the strongest themes in the ICM Act, the coastal planning scheme cannot be established without notification in the *Government Gazette*, and must be

aligned with the objectives of the ICM Act and any coastal management programmes or estuarine management plans which apply to that area.

5.1 Who may establish a coastal planning scheme in a coastal area?

The Minister, MEC, municipalities and management authorities specified in Section 56 (3) may establish coastal planning schemes. Their responsibilities are detailed in Figure 6.3 below.

ESTABLISHMENT OF COASTAL PLANNING SCHEMES		
Who?	Where?	After consultation with whom?
The Minister	Coastal public property: <ul style="list-style-type: none"> <li>- To protect and control the use of marine living resources or implement national norms and standards;</li> <li>- An area that straddles (is on both sides of) a coastal boundary between two provinces; or</li> <li>- An area that extends up to, or straddles the borders of South Africa.</li> </ul>	<ul style="list-style-type: none"> <li>- The MEC; or</li> <li>- Any authority responsible for managing an area to which the scheme relates.</li> </ul> ...and with the consent of : <i>The Minister of Transport</i> <ul style="list-style-type: none"> <li>- If the scheme affects the navigation of vessels at sea; or</li> <li>- Restricts vessels entering or leaving a harbour.</li> </ul>
The manager of a coastal protected area	The area within the protected area.	<i>The Minister:</i> <ul style="list-style-type: none"> <li>- If the scheme extends beyond 500 meters into the sea; or</li> <li>- Affects the protection or use of marine living resources.</li> </ul> ...and with the consent of: <i>The Minister of Transport</i> <ul style="list-style-type: none"> <li>- If the scheme affects the navigation of vessels at sea; or</li> <li>- Restricts vessels entering or leaving a harbour</li> </ul>
The MEC	<ul style="list-style-type: none"> <li>- An area of the coastal zone within the province, except for areas referred to in blocks 1 and 2 above.</li> </ul>	<i>The Minister if the</i> <ul style="list-style-type: none"> <li>- scheme extends beyond 500 metres into the sea; or</li> <li>- Affects the protection or use of marine living resources.</li> </ul> ...and with the consent of: <i>The Minister of Transport</i> <ul style="list-style-type: none"> <li>- If the scheme affects the navigation of vessels at sea; or</li> <li>- Restricts vessels entering or leaving a harbour.</li> </ul> ...and with the consent of: <i>Any other authority responsible for the management of the area.</i>
The municipality	<ul style="list-style-type: none"> <li>- An area of the coastal zone within its municipal jurisdiction, except for areas referred to in blocks 1 and 2 above.</li> </ul>	The MEC (note that the ICM Act refers to "in consultation with MEC and not after consultation") and any management authority responsible for that area.
The management authority of a special management area	Only within the special management area.	The MEC (note that the ICM Act refers to "in consultation with MEC and not after consultation") and municipality, if the coastal planning scheme only applies in that management area.

FIGURE 6.3. Responsibilities with regards to the establishment of coastal planning schemes.

### 5.2 Which coastal scheme takes precedence?

There is a hierarchy of coastal planning schemes that are listed below (in order of precedence) established by:

- The Minister;
- The Coastal Protected Area Authority;
- The MEC;
- The municipality; or
- The special management area authority.

It is important to note that a coastal planning scheme may not create any rights to use land or coastal waters.

### 5.3 Coastal planning and municipal land use schemes

A coastal planning scheme may also form part of any existing municipal land use scheme provided that the municipality does not adopt a land use scheme that is inconsistent with a coastal planning scheme established in terms of the ICM Act. If there is a land use scheme that was created after the commencement of the ICM Act which conflicts with a coastal planning scheme, the coastal planning scheme will prevail.

NOTES

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# CHAPTER SEVEN

Protection of Coastal Environment





Coastal ecosystems provide a range of opportunities that make a significant contribution to the economy while also sustaining coastal communities. It is therefore necessary to maintain the capacity of these ecosystems to provide free goods and services (DEAT, 2000). This chapter details the provisions of the ICM Act to control activities that may be harmful to coastal resources, and the measures instituted to maintain the ecological integrity of the coastal zone. This involves considering natural coastal processes (such as erosion and deposition) and the interests of the whole community in environmental impact assessments (EIAs). This chapter also links the ICM Act with the environmental impact assessment regime established under the NEMA (the NEMA, Act No. 107 of 1998). The chapter is divided into five parts dealing with assessing, avoiding and minimising adverse effects on the coastal zone; regulation of the coastal zone; environmental authorisations; coastal leases and concessions on coastal public property; and finally, general provisions.

## 1. ASSESSING, AVOIDING AND MINIMISING ADVERSE EFFECTS

 Section 58

### 1.1 Duty to avoid causing adverse effects on the coastal environment

This section stipulates the duty of care and the remediation of environmental damage principle which includes the duty to avoid adverse effects on the environment. To achieve this, the ICM Act applies the NEMA, subject to some changes in regards to the coastal environment, to any impact caused by any person, and that has an adverse effect on the coastal environment. Section 28 of the NEMA is therefore changed, in respect to the concepts of 'duty of care' and 'remediation of environmental damage' within the coastal context, to include anyone who has caused or may cause significant pollution or degradation of the coastal environment.

If the Minister believes that an impact or activity is harmful to the environment or has an adverse effect, he or she may issue a notice in the *Government Gazette* to that effect. This presumed activity or impact is considered adverse to the environment until such time as the contrary can be proven. A written notice in the *Government Gazette* that refers to a person as detailed in the relevant section of the NEMA must be regarded as including:

- Users of coastal public property;
- Owner, occupier or person in charge of the property in question;
- Owner or person in charge of a vessel, aircraft or structure at sea, or driver of a vehicle that is causing or may cause a negative effect;
- Operator of a pipeline that ends in the coastal zone; or
- Anyone discharging (releasing) a substance causing or which may cause a negative effect.

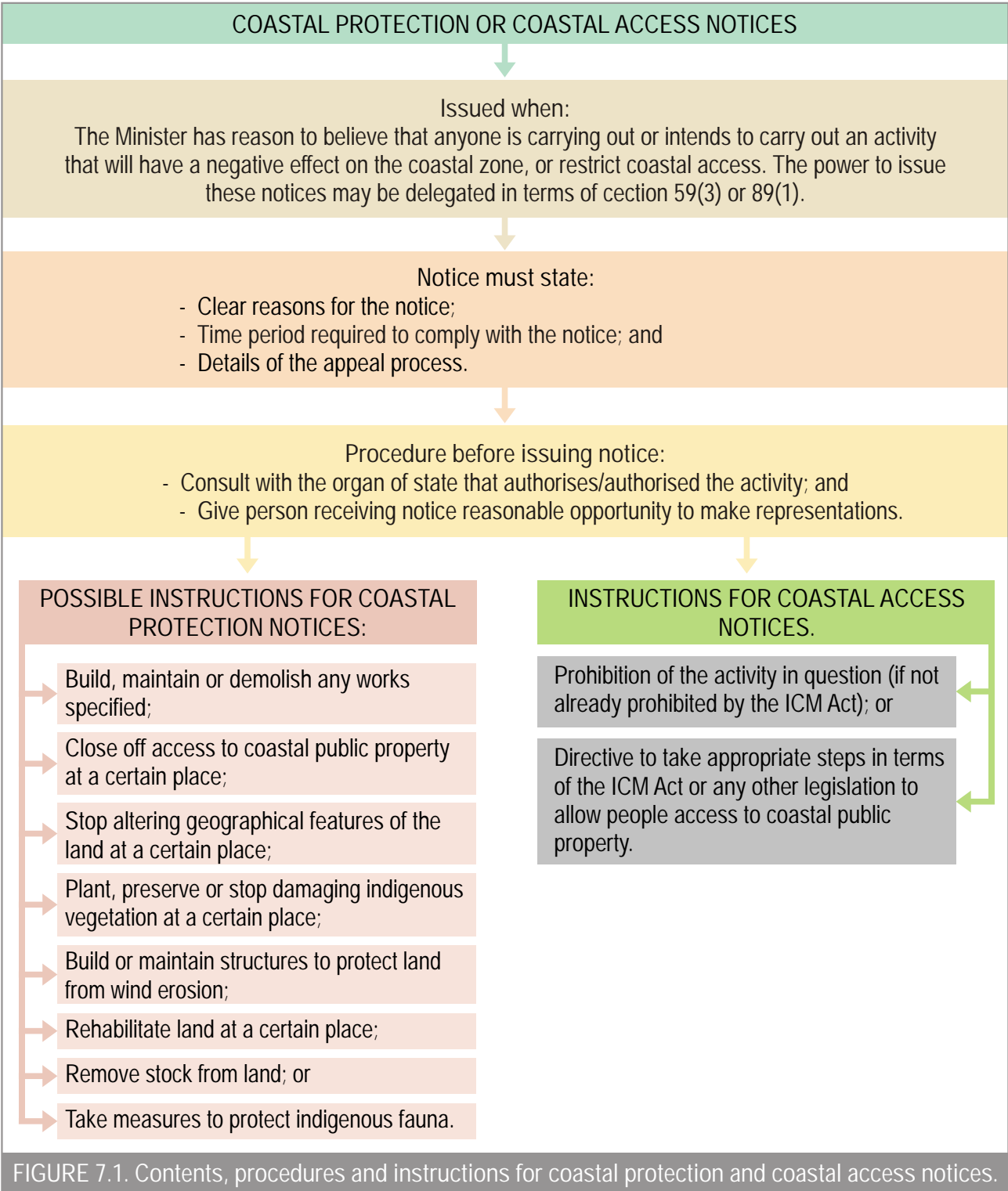
### 1.2 Coastal Protection and coastal access notices

 Section 59

If the Minister has reason to believe that anyone is carrying out, or intends to carry out, an activity that may have a negative effect on the coastal zone, he or she may issue a coastal protection notice to the person responsible for the activity. The intention of such a notice would be to:

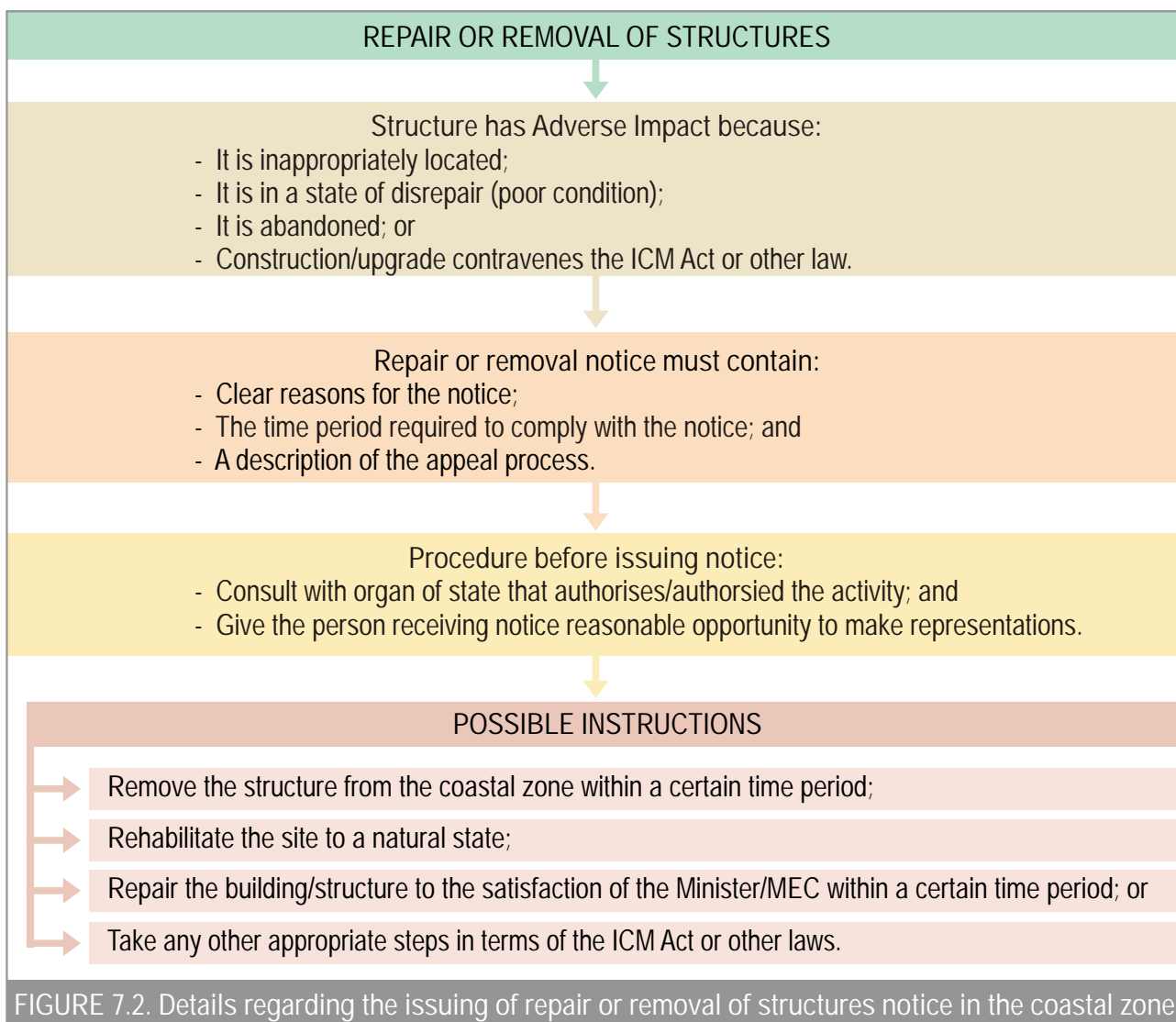
- Prohibit that action or intention of action from taking place; and to
- Instruct that person to:
  - (i) Take steps to protect the environment;
  - (ii) Assess the impact of the activity on the coastal environment in accordance with the EIA regulations published in terms of Chapter 5 of the NEMA; and
  - (iii) Stop or postpone (delay) the activity to allow the potential impact to be studied.

The Minister may only delegate powers to issue coastal protection notices to the MEC (who may sub-delegate this power to a municipality) or an official in the Department of Environmental Affairs. Further details of coastal protection notices or coastal access notices are illustrated in Figure 7.1 on page 51.



### 1.3 Repair or Removal of Structures

A written repair or removal notice may be issued by the Minister or MEC to any person responsible for the development of a structure in the coastal zone that is having or is likely to have an adverse impact on the coastal environment, or if it has been erected, constructed or upgraded unlawfully. The power to issue a repair or removal notice may only be delegated to an official in the Department of Environmental Affairs, while the MEC may sub-delegate his or her power to a municipality in that province. Further details of a repair or removal notice are highlighted in Figure 7.2 below.



Normally a notice will be served via a registered letter to the owner of the structure. However, if the person responsible for the structure or building cannot readily be found, the Minister or MEC can publish the repair or removal notice in the *Government Gazette* (once) and once a week, for two consecutive weeks, in a local newspaper, as well as placing a notice on the structure itself during the period of advertisement.

### 1.4 Failure to comply with certain notices

If a person does not comply with a coastal protection, coastal access or a repair and removal notice, or if the person responsible is not identified after the publication of the notices, the Minister or MEC who issued the notice may instruct the appropriate persons to carry out the requirements of the notice and recover the reasonable costs that result from carrying out the required actions from the responsible person.

## 2. REGULATION OF THE COASTAL ZONE

 Section 62

### 2.1 Implementation of land-use legislation in the coastal protection zone

An organ of state that is responsible for national, provincial or municipal legislation that regulates the planning or development of land, must apply those laws in the coastal protection zone in a way that promotes the principles of cooperative governance<sup>2</sup> (see Chapter 3 of the Constitution, briefly outlined in Box 7.1).

Importantly, when that legislation is applied to the coastal protection zone, it must be applied or carried out in way that gives effect to the reasons for the establishment of the coastal protection zone.

This also means that an organ of state may not allow land that is part of the coastal protection zone (see Section 16 and 17) to be used for anything that may have an adverse effect on the coastal environment without first considering an environmental impact assessment report.

#### Box 7.1 Overview of Constitution Chapter 3

This chapter lists principles of co-operative government and intergovernmental relations that must be observed and adhered to by the three levels of government to provide for effective, transparent, accountable and coherent government through cooperation, mutual trust and the preservation of national unity. Chapter 3 also sets out the requirements that an Act of Parliament must fulfil in terms of facilitating conflict resolution and intergovernmental co-operation, among others.



## 3. ENVIRONMENTAL AUTHORISATIONS

 Section 63 & 64

Certain activities in the coastal zone cause negative environmental impacts. In order to minimise or mitigate these impacts, the NEMA makes provision for the need to obtain environmental authorisations prior to undertaking certain listed activities. Environmental authorisations are issued by competent authorities which are designated in the NEMA regulations providing for the procedures and requirements for environmental authorisations (see Box 7.2).

#### Box 7.2 Schedule of possible competent authorities:

- Department responsible for Environmental Affairs;
- Department of Mineral Resources (mining decisions);
- Provincial departments dealing with environmental issues; and
- Municipalities (if so delegated).



This section requires reference to Chapter 5 of the NEMA, which, in turn, refers to the need to obtain authorisation for listed activities. Any of the listed activities that are conducted in the coastal zone will require an environmental authorisation in terms of the NEMA. In addition to the NEMA requirements and criteria for environmental authorisations, the ICM Act provides for additional criteria that must be considered by the relevant competent authority when evaluating an application for an activity which will take place in the coastal zone. Four key questions must guide the issuing of environmental authorisations. These are set out in Figure 7.3 on page 54.

<sup>2</sup> Although this text is taken from the ICM Act itself, it is imperative to note that Chapter 3 of the Constitution provides for principles of co-operative *government*, not *governance*. It is suggested that the reader assumes that the reference to 'governance' in the ICM Act in section 62 (1) can be read as 'government'. This distinction is very important and the reader is furthermore referred to Box 1.2 for a definition of co-operative governance and directives for further reading in this regard.

## ENVIRONMENTAL AUTHORISATIONS

## 1. What must the competent authority take into account when considering an application for environmental authorisation?

- Representations made by the applicant and by interested and affected parties;
- The applicant's past record in complying with similar authorisations;
- If coastal public property, coastal access land or the coastal protection zone will be affected by the proposed action;
- Estuarine management plans, CMPs and coastal management objectives;
- The socio-economic impact if that activity or action is authorised or not authorised;
- The likely impact on the coastal environment including the cumulative effect (collective effect);
- The likely effect of coastal processes (such as wave, current and wind action, erosion, accretion, sea-level rise, storm surges and flooding) on the activity; and
- The objectives of the ICM Act which apply to the activity.

## 2. Under what circumstances may the competent authority NOT issue an environmental authorisation?

If the development/activity:

- Is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;
- Is situated within the coastal protection zone or coastal access land, and does not further the purposes for which this land was designated;
- Is likely to cause irreversible or long-lasting adverse effects on the coastal environment that cannot be properly mitigated;
- Is likely to be significantly damaged or affected by dynamic coastal processes;
- Will prejudice the achievement of any coastal management objective; or
- Will not be in the interests of the community as a whole.

## 3. Under what circumstances may the competent authority allow activities or developments in coastal public property, the coastal protection zone or coastal access land?

- If the proposed activity or development cannot be located anywhere else; or
- If the development or activity will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area.

## 4. Under what circumstances may the Minister grant an environmental authorisation in the coastal zone?

Activities that cannot be approved by the competent authority (see 2 above) may under certain circumstances be referred to the Minister for consideration. The Minister may, after consultation with the MEC, issue such an authorisation if he or she believes that:

- Allowing the proposed activity to take place will be in the interest of the whole community, despite the negative effects on the coastal zone; and
- On condition that any irreversible or long-lasting adverse effects can be mitigated. An example could include ablution facilities within coastal public property.

FIGURE 7.3. Requirements applicable to environmental authorisations for listed activities in the coastal zone.



The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with the objectives of any coastal management programme in the area. If an environmental authorisation is not required for a coastal activity, the Minister may decide that certain activities require a permit or license, and list the requirements for these permits or licenses in the *Government Gazette*.

## 4. COASTAL LEASES AND COASTAL CONCESSIONS ON COASTAL PUBLIC PROPERTY



Section 65

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

Even though coastal public property is managed in the interest of the general public, in some instances the Minister may grant a coastal lease or concession to allow for some activities to take place on coastal public property, e.g. for a mariculture facility, pipeline or cable servitude. The ICM Act specifies that no person may occupy any part of, or site on, construct or erect any building, road, barrier or structure on or in coastal public property unless under the authority of a coastal lease or concession.

#### Box 7.3 The Marine Living Resources Act (Act No. 18 of 1988) (MLRA)

The MLRA provides for the conservation and management of the marine ecosystem, the long-term sustainable utilisation of marine living resources and equitable access to exploitation, utilisation and protection of certain marine living resources. The reader is referred to the MLRA in its entirety for further details.



No person may claim exclusive rights (private rights) to use any coastal resource that is part of, or derives from coastal public property, unless such a person:

- Is empowered to do so by national legislation;
- Is authorised to do so in terms of a coastal concession awarded by the Minister; or
- Is authorised to do so in terms of an authorisation issued under the Marine Living Resources Act (Act No. 18 of 1998)(see Box 7.3).

A coastal lease or coastal concession may be awarded by the Minister after application from any person for such a lease or concession, or through a prescribed bid process. If a lease or concession is awarded, the lessee or concessionaire is still obliged to obtain any other authorisations that may be required in terms of the ICM Act or other legislation, and comply with any other legislation.

In some cases, lawful coastal leases or concessions existed before the ICM Act came into effect, and these will normally continue for a 24 month period during which time lease or rights holders need to reapply in terms of the ICM Act (see section 95 for more details).

### 4.2 Terms of leases and coastal concessions



Section 66

A coastal lease or coastal concession may not be awarded for a period longer than 20 years and is subject to any conditions prescribed in the *Government Gazette* or determined for a specific case by the Minister. The coastal lease or concession must also be subject to a reasonable rent. If the coastal lease or concession applies to land that is partially or completely submerged by coastal waters, then the lease may allow exclusive use of the water should it be required.

## 5. GENERAL PROVISIONS

 Section 67

### 5.1 Temporary occupation of land within the coastal zone

Subject to the conditions of the Expropriation Act (Act No. 63 of 1975) (see box 7.4), the Minister is allowed to direct that land within the coastal zone may be temporarily occupied. This power may also be delegated to the MEC, who may then also sub-delegate these powers to a municipality. The Minister may also delegate this responsibility to an official in the Department of Environmental Affairs. If the land to be occupied is private property then the owner of the land must be given reasonable written notice of the intention to occupy this land, as well as the reasons for the occupation. The activities that may be undertaken on temporarily occupied land includes:

- Building, maintaining or undertaking repair works to implement a CMP; or
- Responding to pollution or emergency incidents.

The activities above include the actions to :

- Remove sand, stone, gravel, earth or other material;
- Deposit materials; or
- Build and use temporary works including roads.

#### Box 7.4 Overview of the Expropriation Act, Act No. 3 of 1975.

This Act provides for the expropriation of land and other property by the Minister of Public Works or by certain local authorities, for public and certain other purposes. Notice of expropriation to owners as well as offers of compensation must be made. The Minister may withdraw an expropriation if it is in the "public interest or otherwise expedient" to do so. The reader is referred to the Expropriation Act in its entirety for further details.


 Section 68

### 5.2 Amendment, revocation, suspension or cancellation of authorisations

Under certain conditions, the issuing authority may amend, revoke, suspend or cancel authorisations that were issued in terms of the ICM Act and these are:

- Non-compliance with the conditions of the authorisation;
- Conflict with a CMP or negative effect on coastal management objective;
- Changes in circumstances that require an amendment; or
- Cancellation or amendment of the authorisation necessary to meet South Africa's international obligations.

Before an authority amends, revokes, suspends or cancels an authorisation, the issuing authority must send a written notice to the holder of the authorisation informing him of the planned amendment, suspension or cancellation. The holder may then make written representations within 30 days from the day the notice was issued.

#### Box 7.5 Decisions which may be taken concerning authorisations

- Revoke: withdraw authorisation
- Suspend: put authorisation on hold
- Cancel: terminate authorisation
- Amend: revise authorisation



This written representation is an opportunity for the authorisation holder to state the case for not revoking, suspending, cancelling or amending the terms of the authorisation (see Box 7.5 for definitions of these terms).

The Minister or issuing authority will then consider the matter and make a decision. If the Minister or issuing authority has reason to believe that it is urgently necessary to act in order to protect the coastal environment, an immediate decision may be taken in the interests of the promotion, protection or sustainable utilisation of the coastal zone. The Minister or issuing authority may also suspend an authorisation by notice, while the above process is followed.



# CHAPTER EIGHT

Marine and Coastal Pollution Control



Both the coastal ecosystem and human health is negatively affected by point-source and non-point-source pollution. The ICM Act addresses a number of issues relating to coastal pollution including the discharge of effluent into coastal waters (specifically municipal and industrial effluent), prohibiting the importing and exporting of waste or material to be dumped at sea, the prohibition of incineration at sea, and controlling dumping at sea. The ICM Act also prescribes the measures to be taken in cases where emergency dumping has to take place. The Act has two mechanisms that control the permissible discharge of effluent into coastal or estuarine waters. The first is what is known as a general authorisation, and the second is a coastal waters discharge permit. The detail of these management mechanisms are set out in the text below.

## 1. DISCHARGE OF EFFLUENT INTO COASTAL WATERS



Section 69

The ICM Act clearly states that no person is allowed to discharge effluent from a source on land into coastal waters. The Minister may however issue a general authorisation that would allow the discharge of effluent into coastal waters, or after consultation with the Minister responsible for water affairs, discharge into estuaries (see Figure 8.1). Such a general authorisation will apply to persons in general, or specific category of persons, and would require the Minister to publish a notice to that effect in the *Government Gazette*.

### Box 8.1 Definition of point-source and non-point-source pollution (DEAT, 2000)

- Point-source pollution: contaminants discharged from a specific fixed location, e.g. a pipe or outfall structure.
- Non-point source pollution: pollution originating from a number of dispersed sources, e.g. water entering a river from a catchment with mine dumps.



If there is no general authorisation for discharge, anyone who wishes to discharge effluent into coastal waters must apply to the Department responsible for environmental affairs for a coastal waters discharge permit:

- Within 24 months of commencement of the ICM Act, if the discharge is in terms of an existing licence or authorisation issued under the National Water Act (Act No. 36 of 1998); or
- Within 36 months of commencement of the ICM Act, if the authorisation is a continuation of an existing lawful use of water in terms of section 32 and 33 of the National Water Act (Act No. 36 of 1998).

Both the general authorisation and coastal waters discharge permit for the discharge of effluent into estuarine waters require the Minister to consult with, and issue the authorisation or permit in concurrence with the Minister responsible for water affairs.

It is important to note that it is not an offence to discharge effluent from land-based sources into coastal waters (unless otherwise informed), if application for a discharge permit has already been made, or the above periods have not expired. Conditions for the granting or refusal of coastal waters discharge permits by the Minister are described in Figure 8.1 on page 59.

## COASTAL WATERS DISCHARGE PERMITS

### 1. What factors must be considered when granting/refusing a general authorisation or coastal waters discharge permits?

- The interests of the whole community;
- The socio-economic impact if the disposal is authorised or not authorised;
- Relevant coastal management programmes and estuarine management plans;
- The likely impact, including the cumulative effect of such disposal;
- South Africa's obligations under international law;
- The factors listed in Section 27 of the National Water Act (Act No. 36 of 1998) (see Box 8.2); and
- Any factors that may be prescribed.

### 2. When may the Minister NOT grant an application for a coastal waters discharge permit?

- If the discharge is likely to cause irreversible or long-lasting effects that cannot be properly mitigated;
- If the permit is likely to prevent the realisation of any coastal management objective; or
- If the permit is contrary to the interests of the whole community.

### 3. What are the general conditions for discharge into coastal waters?

- The discharger must not waste water;
- Discharge only if it is not reasonably possible to return any freshwater (recovered and cleaned or unpolluted water) to the water resource from where it was sourced;
- The discharger must discharge the effluent according to the conditions of the authorisation;
- The discharger must comply with any applicable waste standards or water management practices (in the ICM Act, the National Water Act or any Act of Parliament) unless the conditions of the authorisation say otherwise; and
- The discharger must register the discharge with the department responsible for water affairs.

FIGURE 8.1 Granting of coastal waters discharge permits.

Within five years of the commencement of the ICM Act the Director-General of DEA must (in consultation with the Director-General responsible for water affairs in respect to discharge into estuaries) review all previous discharge authorisations issued prior to the commencement of the ICM Act. This must be done in order to determine the extent to which existing discharge activities comply with the provisions of the ICM Act, and to make recommendations regarding:

- Whether the discharge should be prohibited;
- Whether a coastal waters discharge permit should be issued; or
- Whether discharge into an estuary should be authorised, or not, in terms of the ICM Act and the National Water Act (Act No. 36 of 1998).

Upon these recommendations being received, the Minister must provide holders of valid authorisations an opportunity to make representation.



An organ of state that issues coastal waters discharge permits must report every three years to the National Coastal Committee on the status of each pipeline discharging effluent into coastal waters, and its impact on the coastal environment. The Minister may enter into an agreement with any member of Cabinet to assist with the implementation of certain aspects [see section 69 (12)] regarding the issuing of coastal waters discharge permits. For example, the Minister might have an agreement with the Minister responsible for water affairs, which allows him or her to take responsibility for discharge of effluent into estuaries.

Box 8.2. Section 27 of the National Water Act (Act No. 36 of 1998) -Factors to be considered when issuing general authorisations:

- Existing lawful water uses;
- Need to redress past discriminations;
- Efficient and beneficial use of water in the public interest;
- Socio-economic impact if issued, and if not issued;
- Relevant catchment management strategies;
- Likely effect of authorisation on resources and other users;
- Class and resource quality objectives of water resource;
- Investments made and to be made by resource user;
- Strategic importance of water resource;
- Quality of water in water resource which may be needed for Reserve and to meet international obligations; and
- Probable duration of undertaking.



## 2. PROHIBITION OF INCINERATION OR DUMPING AT SEA



Section 70-72

The ICM Act is clear on its intent to prohibit incineration at sea and minimise dumping at sea. The ICM Act does allow for dumping permits in certain circumstances and under strict conditions. Further, the ICM Act allows for dumping or incineration in cases of emergency (where human life or the vessel, aircraft, platform or structure is threatened), but only after following strict international requirements. These details are provided in Table 8.1 and the figures below.

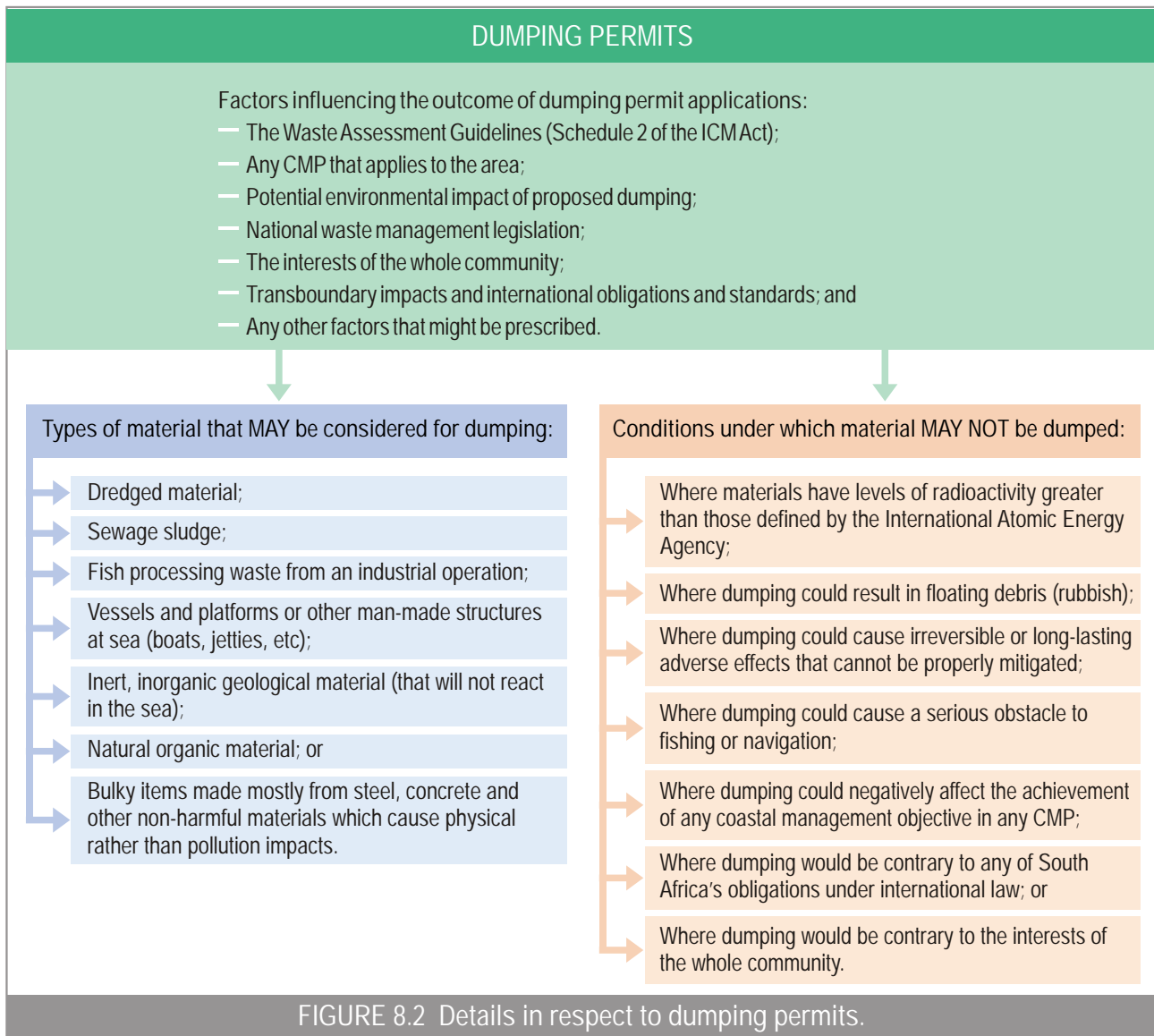
TABLE 8.1. Prohibition of incineration or dumping at sea

PRESCRIPTIONS	DETAIL
Incineration at sea	No waste of any kind or any other material may be incinerated within coastal waters, the Exclusive Economic Zone (EEZ), or aboard a South African vessel.
Importation of waste	Waste may not be imported to be incinerated or dumped at sea within the coastal waters or EEZ.
Exportation of waste	No waste of any kind or any other material may be exported to be dumped or incinerated on the high sea or in an area under the jurisdiction of another state.
Loading of waste	It is not permissible to load any waste or other material to be dumped or incinerated at sea onto any vessel, aircraft or other structure at any place in the Republic, including the EEZ, unless there is written proof that such dumping or incineration has been authorised in terms of a dumping permit.
Dumping at sea in South Africa	Dumping at sea of any waste or other material within the coastal waters or EEZ of South Africa is not allowed without a dumping permit.
Dumping on the high sea	No waste or other material may be dumped on the high seas, from a South African vessel, aircraft, platform or other man-made structure at sea without a dumping permit.
Dumping at sea in another state	No waste or other material may be dumped from a South African vessel, aircraft, platform or other man-made structure at sea, in an area under the jurisdiction of another state without the written permission of that state.

As pointed out above, dumping at sea is allowed under certain circumstances via a dumping permit, and in emergency situations in which human life is threatened or the vessel is at risk. Although the ICM Act is silent on the matter, it goes without saying that any dumping in this instance should try to minimise any potential or real negative effects, and must be reported to the Department of Environmental Affairs in advance, in order for the Minister to

consult with foreign countries and the International Maritime Organisation (IMO) if necessary. In such cases the Minister may deviate from the prescribed procedure in Table 8.1 on page 60. The Minister must then follow, as far as practical, any recommendations made by the IMO and report back to the IMO within a reasonable period.

Dumping permits require an application to be made (in the prescribed form) to the Department and a prescribed fee to be paid. They are issued for a maximum of two years and can only be renewed (re-issued) once, for no more than two years. Thereafter a new application will have to be submitted. Figure 8.2 below provides more details on the factors influencing the outcome of dumping permit applications.



### 3. NATIONAL ACTION LIST

 Section 73

It is the Minister's responsibility to develop, maintain and expand a National Action List to allow for the screening of waste proposed for marine disposal according to its potential effect on human health and the marine environment. The National Action List must be developed according to the Waste Assessment Guidelines (Schedule 2 of the ICM Act) and contain the prescribed information.





# CHAPTER NINE

Appeals





Chapter 9 gives details of the process of appealing against the issuing or refusal of authorisations, coastal access notices, coastal protection notices, or repair and removal notices.

## 1. APPEALS



Section 74-75 & 77

The ICM Act allows for appeals to be lodged against notices served or any authorisations granted in terms of the ICM Act. Figure 9.1 below highlights the conditions and requirements for the appeal process under the ICM Act. It should be noted that although section 63 of the ICM Act requires a coastal EIA to consider additional issues, an appeal lodged against an environmental authorisation issued for a coastal EIA (in terms of the NEMA) must follow the same appeal process described in the NEMA.

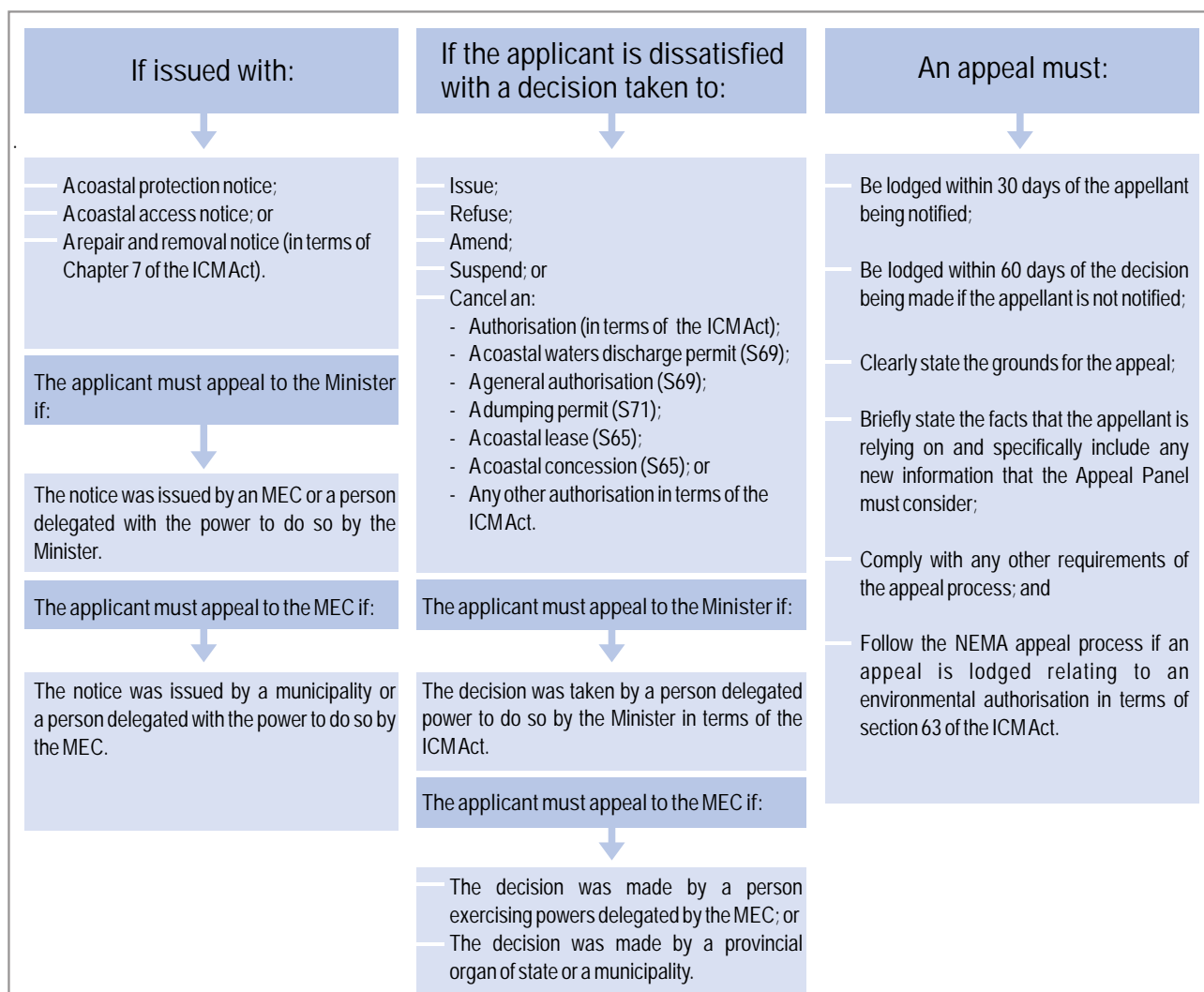


FIGURE 9.1 Content of appeals and procedure to be followed when appealing in terms of the ICM Act .

It is important to note that submitting an appeal does not suspend an authorisation or exemption, or any part of these decisions, or any notice issued under Chapter 7 of the ICM Act, unless so stated by the Minister or MEC. If there is a good reason, the Minister or MEC is allowed to extend the time period required to lodge an appeal. The Minister or MEC is also allowed to dismiss any appeals that he or she decides to be trivial, frivolous or without merit. In terms of the ICM Act, appeals may be considered by an Advisory Appeal Panel appointed by the Minister or MEC to advise them. This panel must consist of an uneven number of individuals. The final decision rests with the Minister or the MEC, as the case may be. Details of the proposed appeal process are illustrated in Figure 9.2 on page 65.



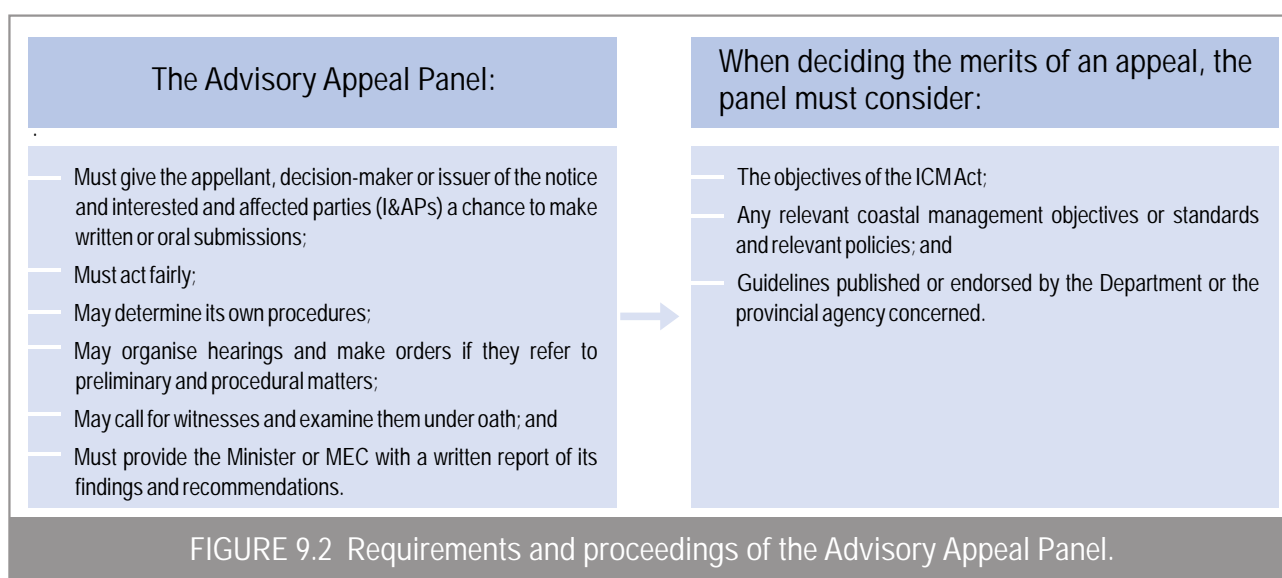
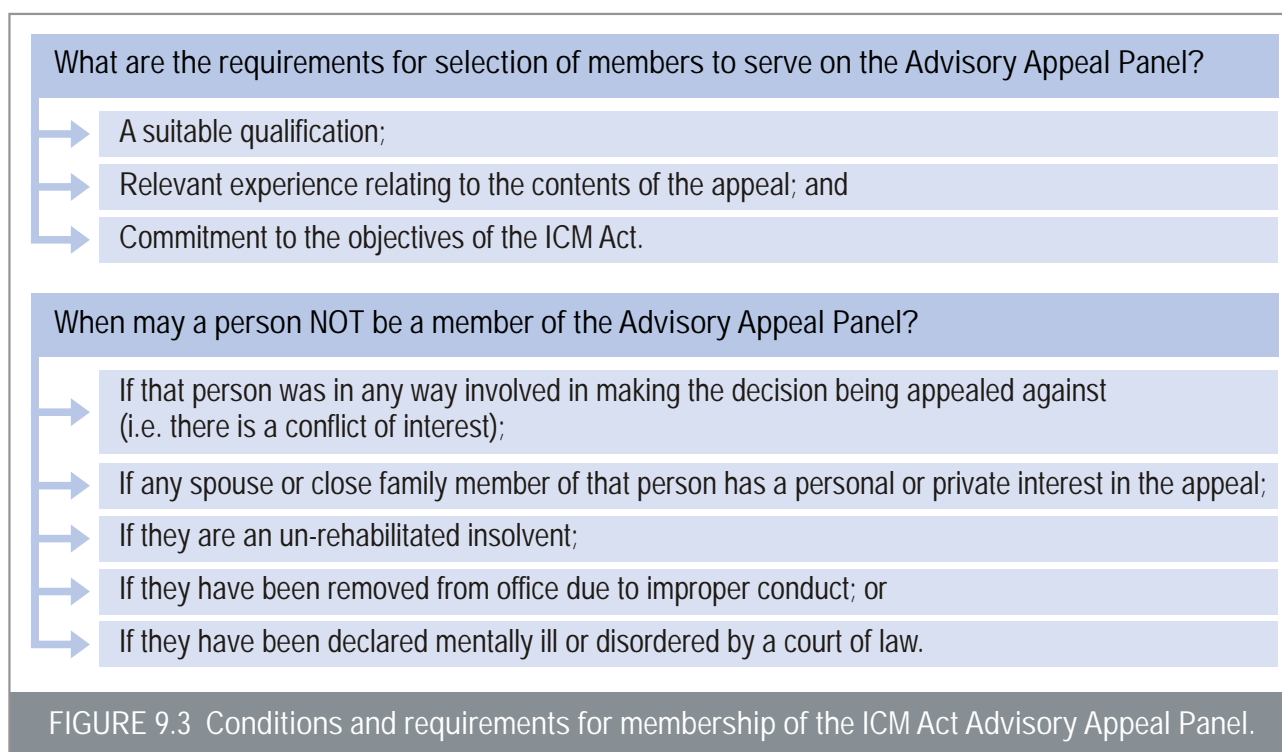


Figure 9.3 below describes the requirements for, and disqualifying criteria of the Advisory Appeal Panel which must review appeals in terms of the ICM Act, and advise the Minister or MEC when making their decision.

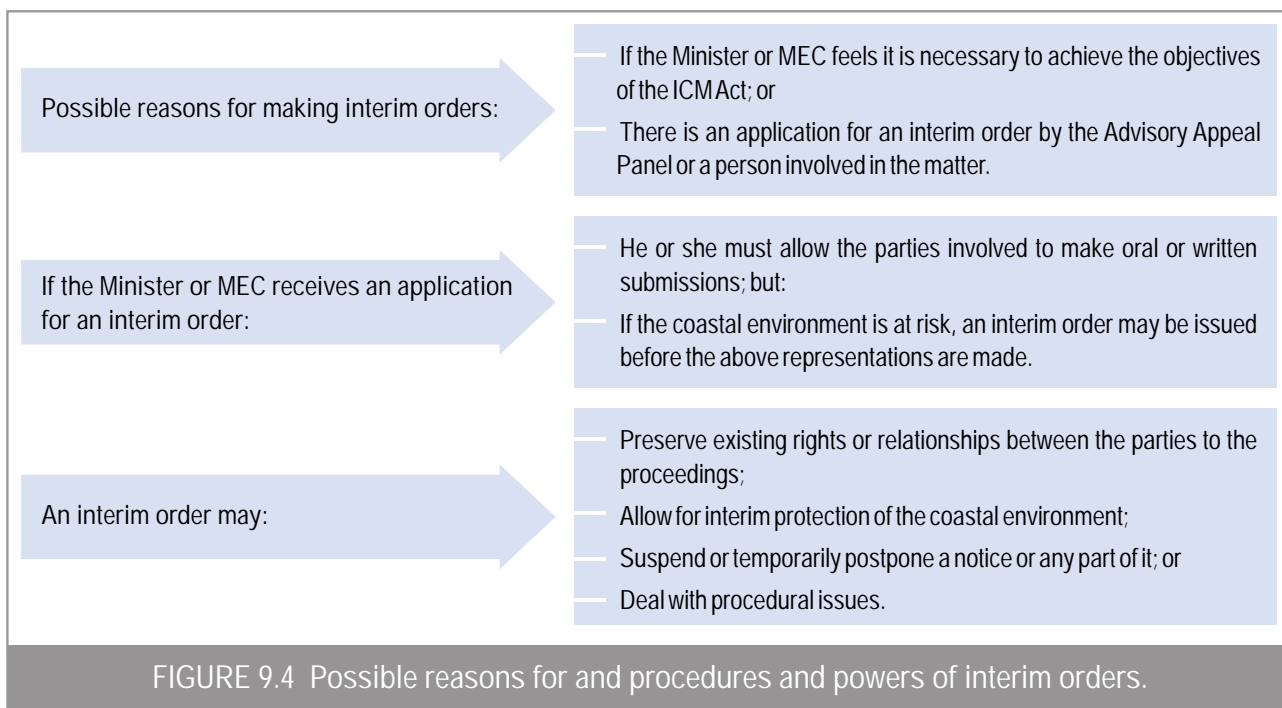


The decision of the majority of the members of the panel will represent the decision of the whole panel. However, any dissenting (disagreeing) opinions by members of the panel must be included in the written report. It is the Minister's responsibility to consult with the Minister of Finance and the MEC's responsibility to consult with the MEC responsible for finance, to determine the rate of remuneration payable to members of Advisory Appeal Panels appointed by them, if members are not employed by government.

## 2. INTERIM ORDERS BY THE MINISTER OR MEC

 Section 76

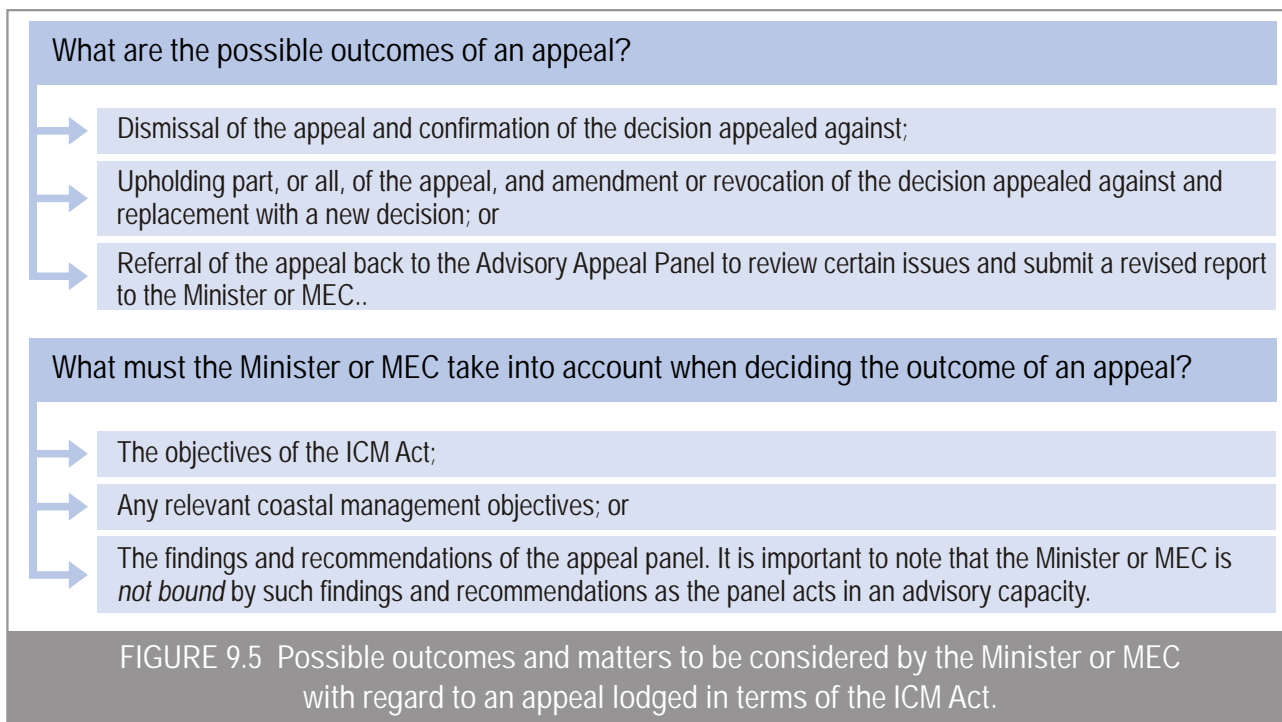
To allow for temporary action to take place after an application for an appeal has been lodged, the Minister or an MEC may make any interim (temporary) order prior to the appeal being finalised. Reasons for, and powers of an interim order are detailed in Figure 9.4 below.



## 3. DETERMINATION OF APPEAL BY THE MINISTER OR MEC

 Section 78

As highlighted in Figures 9.1 and 9.4, the authority to decide the outcome of the appeal rests either with the Minister or MEC. Figure 9.5 below depicts the possible outcomes of an appeal lodged in terms of the ICM Act, as well as the factors that the Minister or MEC must consider when deciding the outcome of an appeal.



# CHAPTER TEN

## Enforcement



This chapter deals with the definition of certain offences as well as detailing the penalties that are associated with the three categories of offences. Chapter 10 also deals with the powers of the Minister or the MEC to initiate legal processes against offenders.

## 1. OFFENCES AND PENALTIES IN TERMS OF THE ICM ACT



Section 79-80

The ICM Act makes provision for three different categories of offences, each attracting a different penalty depending on the severity of the offence. Table 10.1 summarises the offences, the ICM Act section contravened and the penalty associated with the first conviction of such an offence. It is important to note that a person who is convicted of a category two or a category three offence for the second time may be sentenced as if they had committed a category one or two offence, and be penalised accordingly.

TABLE 10.1. Offences and penalties that may be issued under the ICM Act.

OFFENCE CATEGORY	OFFENCES	ICM ACT SECTION CONTRAVENED	PENALTY
1	<ul style="list-style-type: none"> <li>– Discharging effluent from a source on land into coastal waters;</li> <li>– Incinerating waste or other material at sea;</li> <li>– Loading, importing or exporting waste to be dumped or incinerated at sea;</li> <li>– Dumping waste or other material at sea without a permit;</li> <li>– Altering any authorisation;</li> <li>– Fabricating or forging an authorisation;</li> <li>– Using or possessing any false documentation or authorisation; or</li> <li>– Making a false statement or report to get authorisation or when objecting to an authorisation.</li> </ul>	<ul style="list-style-type: none"> <li>69</li> <li>70</li> <li>70</li> <li>70</li> <li>63, 65, 69, 71</li> <li>63, 65, 69, 71</li> <li>63, 65, 69, 71</li> <li>63, 65, 69, 71</li> </ul>	<ul style="list-style-type: none"> <li>– Up to R5 million fine;</li> <li>– Up to 10 years in prison; or</li> <li>– Both</li> </ul>
2	<ul style="list-style-type: none"> <li>– Failure to comply with a repair and removal notice;</li> <li>– Hindering a person authorised to act in terms of the ICM Act; or</li> <li>– False representation as a person authorised to act in terms of the ICM Act.</li> </ul>	<ul style="list-style-type: none"> <li>61</li> <li>79</li> <li>79</li> </ul>	<ul style="list-style-type: none"> <li>– Up to R500 000 fine;</li> <li>– Up to 5 years in prison/ community service; or</li> <li>– Both.</li> </ul>
3	<ul style="list-style-type: none"> <li>– Failure to comply with a condition of authorisation;</li> <li>– Performs an action in contravention of conditions of the authorisation;</li> <li>– Allowing a person to commit a category an offence related to the two previous offence categories;</li> <li>– Failure to comply with a coastal protection notice or coastal access notice; or</li> <li>– Contravention of any other provisions of the ICM Act.</li> </ul>	<ul style="list-style-type: none"> <li>79</li> <li>79</li> <li>79</li> <li>61</li> <li>79</li> </ul>	<ul style="list-style-type: none"> <li>– Up to R50 000 fine ;</li> <li>– Up to 6 months community service; or</li> <li>– Both.</li> </ul>
Offences not covered by the categories above.	<ul style="list-style-type: none"> <li>– Offences in terms of regulations promulgated by the Minister (Section 83) or MEC (Section 84).</li> </ul>	<ul style="list-style-type: none"> <li>85</li> </ul>	<ul style="list-style-type: none"> <li>– An appropriate fine ;</li> <li>– Up to two years in prison; or</li> <li>– Both</li> </ul>

If possible, a court sentencing an individual to community service in terms of the ICM Act must impose a service that would benefit the coastal environment. A court also has the power to suspend, revoke or cancel an authorisation granted to the offender in terms of the ICM Act.



Section 81

### 1.1 Jurisdiction of courts

If someone commits an offence on, in or above coastal waters, the court whose area of jurisdiction abuts (adjoins) the coastal waters has jurisdiction to prosecute the offender.



Section 82

### 1.2 Actions in relation to coastal zone

In order to prevent damage to, or recover costs of damage to coastal public property or the coastal environment, the Minister, MEC or municipality may institute legal proceedings or other appropriate measures. This may also be undertaken to abate nuisances affecting the rights of people to use and enjoy coastal public property. Similarly, the Minister, MEC or municipality may accept legal processes and defend any legal proceedings initiated in connection with coastal public property.





# CHAPTER ELEVEN

General Powers and Duties



Chapter 11 defines the powers and responsibilities that are assigned to the Minister and the MEC in terms of making regulations and taking urgent action. This chapter is predominantly a list of the types of regulations that the Minister and the MECs are allowed to make in relation to the ICM Act, including a list of which regulations need the approval of the Minister of Finance. As a general rule, any regulation that will require money to be collected as fees, or the expenditure of funds in future years may only be made with the agreement of the Minister of Finance, or the MEC who is in charge of finances for the coastal province for which provincial regulations are published. This chapter also makes provision for the MEC to take action should he or she feel that municipalities are not doing enough to protect the coastal environment. The same is true for the Minister in the case of coastal provinces and the MEC of that province. In order to inform the Minister and also the public, the MEC of each coastal province is required to draft a provincial state of the coastal environment report every four years. The Minister is also required to prepare and update a National State of the Coast report based on the provincial reports.

## 1. REGULATIONS

The Minister may make regulations which relate to any matter which the ICM Act deals with, or any regulations that will assist the implementation of the ICM Act. This includes, but is not limited to the regulations listed below:

 Section 83

TABLE 11.1. Regulations that may be published by the Minister.

MATTERS FOR WHICH THE MINISTER MAY MAKE REGULATIONS	
1.	The implementation or enforcement of the National Coastal Management Programme.
2.	The sustainable use of coastal resources to address poverty in areas where people depend on the coast for their livelihoods.
3.	The sustainable use of coastal resources.
4.	Coastal public property, specifically related to: <ul style="list-style-type: none"> <li>■ Public access to coastal public property;</li> <li>■ Rehabilitation of coastal public property;</li> <li>■ Fees, costs and rents for the use of coastal public property; or</li> <li>■ Research conducted within or relating to coastal public property.</li> </ul>
5.	The type and format of data to be submitted to the relevant authorities for coastal monitoring purposes, or to maintain a coastal information system.
6.	The establishment of national norms and standards and frameworks to implement the ICM Act which includes systems guidelines, protocols, procedures, methods and standards which relate to the following: <ul style="list-style-type: none"> <li>■ The content, revision, implementation, monitoring and evaluation of progress of all coastal management programmes;</li> <li>■ The amendment of coastal planning schemes;</li> <li>■ The quality of coastal public property and coastal ecosystems;</li> <li>■ The factors that need to be taken note of when deciding applications;</li> <li>■ The circumstances in which exemption may be given from compliance with a coastal management programme;</li> <li>■ The uses of the coastal zone that do not match the coastal planning scheme;</li> <li>■ The results needed to be achieved when treating any effluent, waste or storm water that is likely to enter coastal public property, including responsibilities and methods to monitor this effluent;</li> <li>■ The appointment, training, powers and supervision of voluntary coastal officers; or</li> <li>■ Public safety and behaviour on coastal public property.</li> </ul>

7.	The procedures that need to be followed relating to applications for authorisation including the following: <ul style="list-style-type: none"> <li>■ The conditions that the applicants for authorisation must comply with before and after lodging the application;</li> <li>■ The application fees to be paid;</li> <li>■ The authorities that will be competent to issue the different kinds of authorisations;</li> <li>■ The consultation procedures to be followed with organs of state and other interested and affected parties (I&amp;APs);</li> <li>■ The authorities whose consent is required before permits may be granted;</li> <li>■ The methods of objecting to permits;</li> <li>■ The powers of issuing authorities when deciding such applications;</li> <li>■ The factors that must be taken into account when deciding whether or not to approve the application;</li> <li>■ The circumstances in which applications must be approved or refused and guidelines which refer to the conditions on which permits may be issued; and</li> <li>■ The bid process that must be followed when coastal leases and coastal concessions are to be awarded.</li> </ul>
8.	The contents of authorisations.
9.	The provision of security that relates to any obligation that may develop because of activities that are authorised to occur by permits, coastal leases or coastal concessions, and the form of this security.
10.	The procedures that are to be followed relating to the lodging and consideration of appeals (in terms of Chapter 9 of the ICM Act), including: <ul style="list-style-type: none"> <li>■ The fees to be paid;</li> <li>■ The conditions with which the appellant must comply before or after lodging the appeal;</li> <li>■ The powers of the MEC, and the procedures that an MEC must follow when deciding an appeal; and</li> <li>■ The circumstances in which a temporary stay may be granted relating to notices (see sections 59 and 60 of the ICM Act), and also relating to amending, revoking or cancelling of permits, leases or coastal concessions.</li> </ul>
11.	Methods, procedures and conditions of enforcing compliance with authorisations.
12.	The issuing and contents of notices to people that have contravened or failed to comply with: <ul style="list-style-type: none"> <li>■ A provision of the ICM Act;</li> <li>■ A coastal management programme; or</li> <li>■ A condition of a permit, coastal lease or a coastal concession.</li> </ul>
13.	Training, education and public awareness programmes relating to the protection, conservation and enhancement of the coastal environment and the sustainable use of coastal resources.
14.	The presence of vehicles and aircraft within the coastal zone.
15.	The presence and recreational use of vessels on coastal waters.
16.	The seizing, removal and disposal of vehicles, aircraft or property suspected of being used to commit an offence in terms of the ICM Act, or if these items contain coastal resources that are suspected of being obtained illegally.
17.	Methods, procedures and conditions for obtaining access to relevant information including entry to private property.
18.	The issuing and contents of permits or licenses.

### 1.1 Consulting with other Ministers

Any regulation that entails the expenditure of funds in future years, calls for application fees for dumping permits or coastal waters discharge permits or that involves imposing fees, costs or rent, requires consultation between the Minister and, normally, the agreement of the Minister of Finance.

The Minister must also consult with the Minister responsible for water affairs if the regulation involves estuaries. In addition, the Minister must consult with the MEC for the province, and municipalities before making any regulations relating to the coastal zone within that province.



## 1.2 Regulations by MECs

The MEC of a coastal province may also make regulations in terms of the ICM Act, but must first consult with the Minister before doing so, and must make sure that the proposed regulations are consistent with any national norms or standards that relate to the objectives listed in Table 11.2 below.

TABLE 11.2. Regulations that may be published by the MEC of a coastal province.

MATTERS FOR WHICH THE MEC MAY MAKE REGULATIONS:	
1.	The implementation and enforcement of the provincial coastal management programme;
2.	The management of the coastal protection zone of the province;
3.	The use of coastal public property for recreational purposes;
4.	The impounding, removal and disposal of vehicles, vessels, aircraft or property found abandoned on coastal public property;
5.	The granting of permission to build or alter a structure that is partly or completely seaward of a coastal set-back line and the process to be followed (including who may give such permission and under what circumstances and conditions permission may be given);
6.	The implementation within the province of any national norm, framework or standard (see section 83 of the ICM Act, Table 11.1 of this document);
7.	The management of a special management area; or
8.	Any matter that may be necessary to facilitate the implementation of the ICM Act in the province.

It is important to note that any regulation that will require money to be spent in the future may only be made with the agreement of the MEC who is in charge of finance in that province.

## 1.3 General provisions which apply to regulations

The Minister or MEC must first publish draft regulations for public comment and consider any submissions received from the public before adopting such regulations. This does not apply to minor technical amendments. The general provisions applicable to regulations made under sections 83 or 84 are set out in Table 11.3 below.

TABLE 11.3. General provisions applicable to regulations.

A REGULATION MADE BY THE MINISTER OR MEC MAY:	DETAILS (IF APPLICABLE)
Restrict, prohibit or control any act that may have an adverse effect on the coastal environment, and a regulation may restrict, prohibit or control any act absolutely or conditionally.	
Apply generally:	<ul style="list-style-type: none"> <li>- Throughout South Africa or the relevant province, or only in a certain place or category of place;</li> <li>- To all people or only to a certain category of people;</li> <li>- To all prohibited activities or only to a specific activity or category of activities; or</li> <li>- To all types of waste or other materials or only to a specific type of waste or other material.</li> </ul>
Differentiate between different:	<ul style="list-style-type: none"> <li>- Areas or categories of areas;</li> <li>- People or categories of people;</li> <li>- Activities or categories of activities; or</li> <li>- Types of wastes or other materials or categories of types of waste or other materials.</li> </ul>
Make sure that anyone who contravenes a regulation or does not comply with a provision thereof is guilty of an offence and liable on conviction to:	<ul style="list-style-type: none"> <li>- Imprisonment for not more than 2 years;</li> <li>- An appropriate fine; or</li> <li>- Both of the above.</li> </ul>





#### 1.4 Amendment of Schedule 2

The Minister may amend Schedule 2 of the ICM Act to ensure that it continues to allow South Africa to meet its obligations under international law.

## 2. POWERS TO BE EXERCISED BY THE MINISTER AND MEC



#### 2.1 Powers to be exercised by the Minister

The Minister must exercise the powers granted to the MEC (see section 22 of the ICM Act), to excise all or part of a protected area from the coastal protection zone, if all or part of that area:

- Extends into the sea further than 500 metres from the High-Water Mark (HWM);
- Is a national protected area [see the National Environmental Management: Protected Areas Act (Act No. 57 of 2003) (see Box 11.1)];
- Straddles (is on both sides of) a coastal boundary between two provinces; or
- Extends up to, or straddles the borders of South Africa.

#### Box 11.1 Summary of the National Environmental Management: Protected Areas Act (Act No. 57 of 2003)

This Act provides for the protection and conservation of ecologically viable areas which represent South Africa's biological diversity, including natural landscapes and seascapes. In addition, the Act provides for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; and for inter-governmental co-operation and public consultation in matters concerning protected areas.



If the above conditions apply, then the parts of section 22 of the ICM Act that refer to “the MEC” must be read as if to say “the Minister”.

#### 2.2 Directives to Municipalities from MECs



In terms of the ICM Act, coastal municipalities are tasked with taking measures to:

- Prevent or remedy adverse effects on the coastal environment;
- Adopt or implement a municipal coastal management programme; and
- Give effect to the provincial coastal management programme.

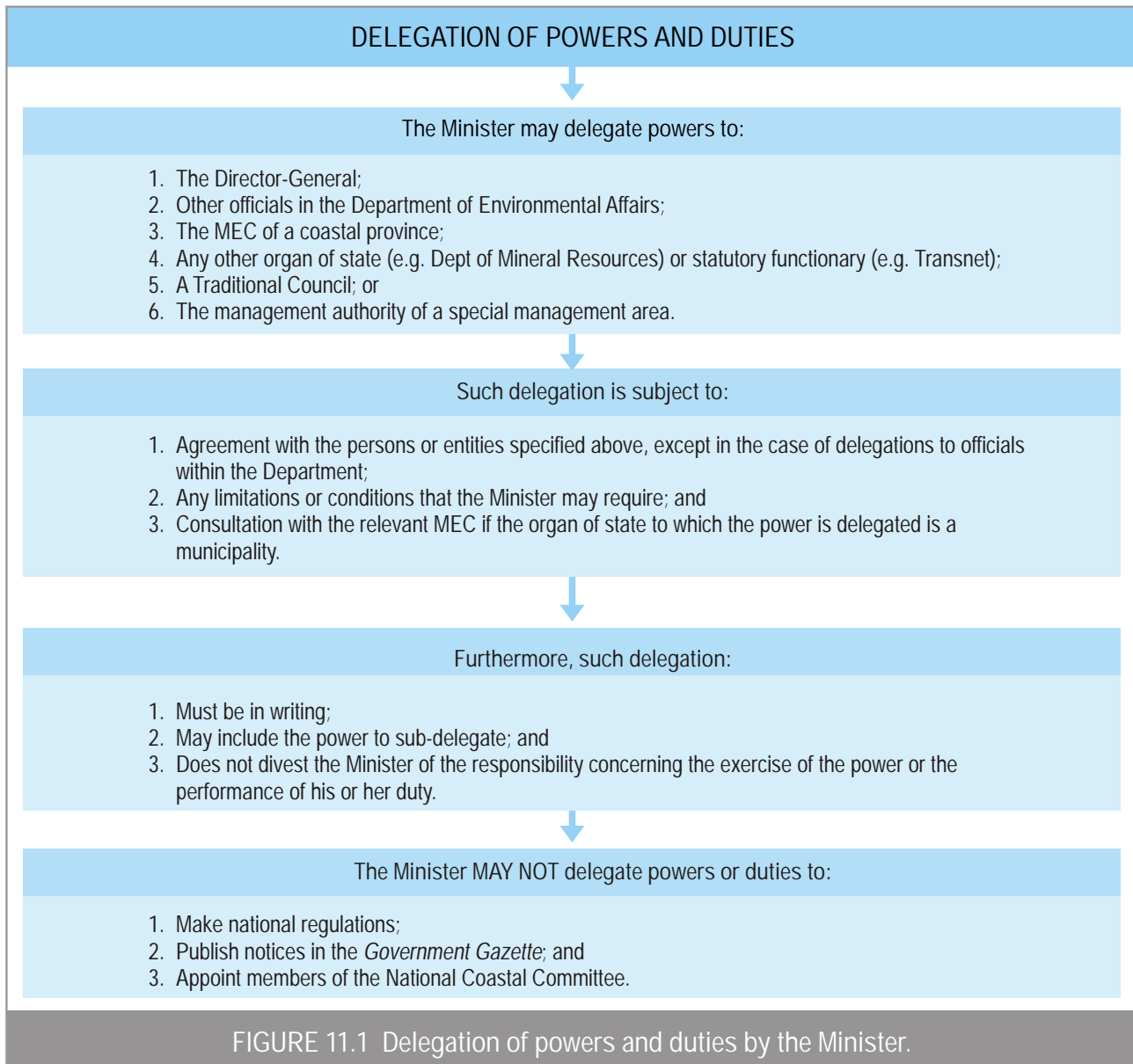
Should an MEC of a coastal province decide that a municipality within that province is NOT taking adequate measures to carry out the above duties, the MEC may direct the municipality in question to take *specific* actions to fulfil its duties. Before issuing such a directive, the MEC must first consult with the municipality and give it a reasonable opportunity to make representations. If the municipality does not comply with the directive from the MEC (described above), then the MEC may use any powers granted to him or her in terms of the ICM Act to:

- Take measures to prevent or remedy adverse effects on the coastal environment;
- Implement or monitor compliance with provincial norms and standards; or
- Facilitate the provincial coastal management programme.

### 3. DELEGATIONS AND ENFORCEMENT

 Section 89

The Minister may delegate most powers or duties assigned to him or her in terms of the ICM Act, but in some cases the Minister's powers are curtailed by only allowing delegation to the MEC or officials in his or her department [See for example sections 59(3) and 60(3)(1)]. Certain powers or duties may not be delegated at all (See Figure 11.1 below for details).



The Minister must give notice, in the *Government Gazette*, of any delegation of power, except in the case of delegations to officials within the Department. The Minister may at any stage confirm, vary or revoke any decision that was made as a result of a delegation in terms of the ICM Act, or any statute repealed by the ICM Act. The Minister may also withdraw any delegation made in terms of the ICM Act, in writing.

#### 3.1 Enforcement by the Minister

 Section 90

The MEC of a coastal province is responsible for (among others) the following duties in terms of the ICM Act:

- Preventing or remedying adverse effects on coastal public property;
- Implementing or monitoring compliance with national norms or standards;
- Giving effect to the National Coastal Management Programme; and
- Publishing set-back lines to implement or monitor compliance with provincial norms and standards.

Should the Minister decide that the MEC of a coastal province is NOT taking adequate actions to fulfil the aforesaid duties, the Minister may instruct that MEC to take specific measures in order to fulfil his or her duties in terms of the ICM Act. If the MEC fails to comply with the instruction, the Minister may use any powers given to the MEC in terms of the ICM Act needed to take any action referred to in the instruction, including the power to:

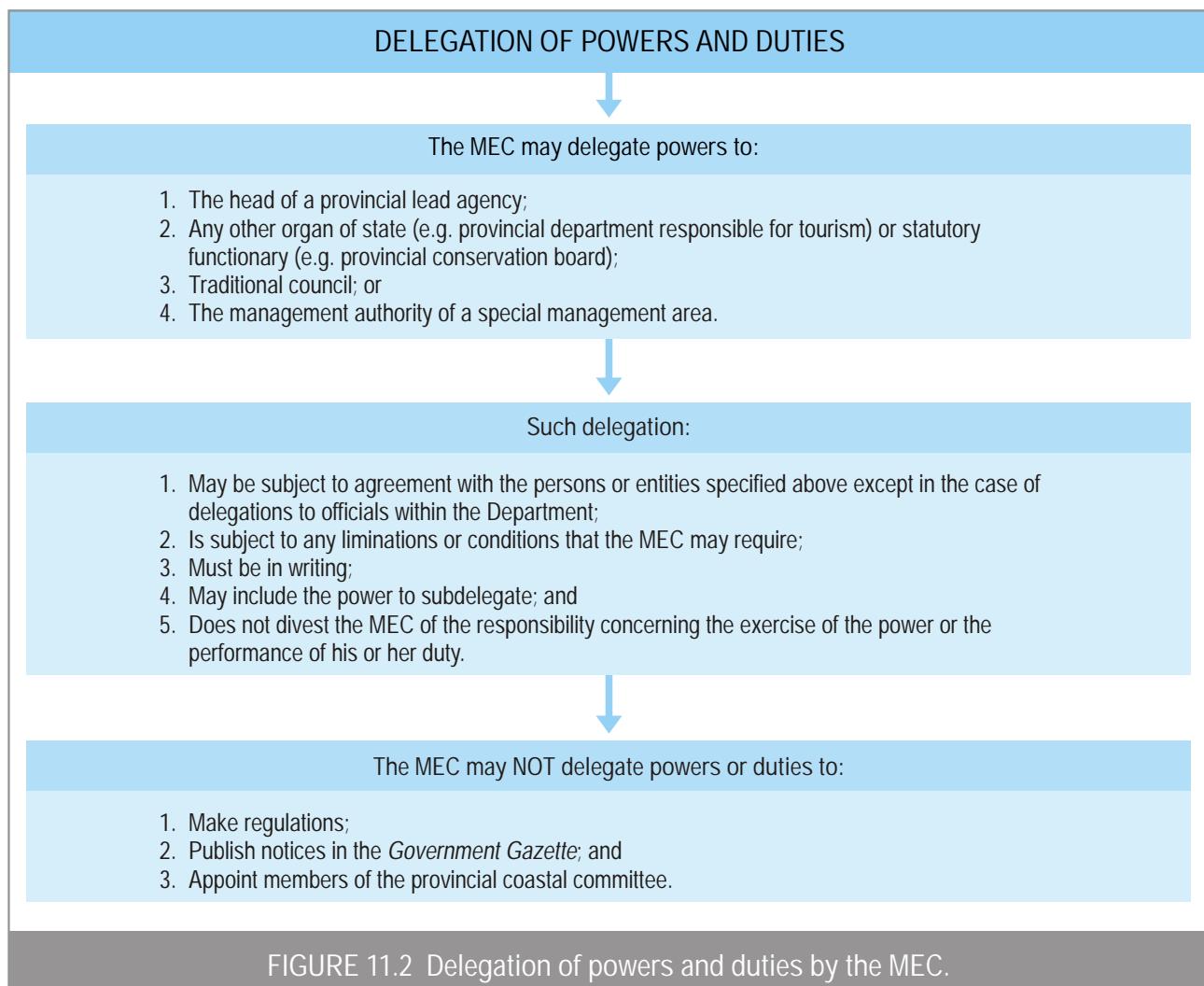
- Issue coastal protection or coastal access notices and repair and removal notices (section 59 and 60);
- Take measures to recover costs (section 61); or
- Allow temporary occupation of land within the coastal zone (section 67).

Before the Minister takes any of the measures described above, he or she must first consult with the MEC in question and give him or her a reasonable chance to make representations.



### 3.2 Delegation by MECs

Similar to the powers of delegation assigned to the Minister, the MEC of a coastal province may delegate most powers or duties assigned to him or her in terms of the ICM Act, however certain powers or duties may not be delegated at all. This is elaborated in Fig. 11.2.



The MEC may at any stage confirm, vary or revoke any decision that was made as a result of a delegation in terms of the ICM Act. The MEC may also withdraw any delegation made in terms of the ICM Act, in writing.

## 4. GENERAL MATTERS



Section 92

### 4.1 Urgent action by the Minister

The Minister may verbally instruct any responsible person to stop an activity if the activity poses:

- An immediate risk of serious danger to the public or property; or
- An immediate risk of serious damage, or is of potentially significant detriment to the coastal environment.

The verbal directive mentioned above must be confirmed in writing within seven days. The conditions of sections 59 (1), (3) and (4) and 60 (1), (3) and (4) of the ICM Act (coastal protection, coastal access and repair or removal of structures notices) also apply with the necessary changes. It should be noted that the power to issue a verbal directive can be delegated (see Figure 11.1 and section 92).

### 4.2 Information and reporting on coastal matters



Section 93

The Minister must progressively, and within the available resources, ensure that the public has access to enough information in order to decide whether the State is fulfilling its duty to protect and manage the coastal zone, in terms of section 3 of the ICM Act. The MEC for each coastal province must:

- Prepare a report on the state of the coastal environment in the province every four years, which must contain any information required by the Minister;
- Update the report once new and applicable information relating to the coastal environment under the jurisdiction of the MEC becomes available; and
- Submit the report, including any updated reports, to the Minister.

The Minister must then prepare and regularly update a National Report on the State of the Coastal Environment based on the provincial reports described above.

### 4.3 Coordination of actions between provinces and municipalities



Section 94

The MEC must:

- Liaise with coastal municipalities in the province to coordinate actions taken in terms of the ICM Act by provincial organs of state with those actions taken by municipalities in the province; and
- Monitor compliance by such municipalities with the ICM Act.

# CHAPTER TWELVE

Miscellaneous Matters





This chapter deals with so-called ‘transitional’ or changeover matters that do not fall under any of the previous chapters. This may be thought of as the practical and logistical aspects of ensuring smooth implementation of the ICM Act, primarily as far as it relates to existing rights to coastal public property (leases and concessions) and existing structures (legal and illegal) thereon. This chapter also provides for the repeal of previous legislation. Further, it indicates what is “saved” in terms of the ICM Act e.g. beach regulations previously promulgated by local authorities under the Sea Shore Act (Act No. 21 of 1935).

## 1. TRANSITIONAL PROVISIONS

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



Figure 12.1 below describes the transitional provisions as they apply to existing rights and leases on coastal public property.

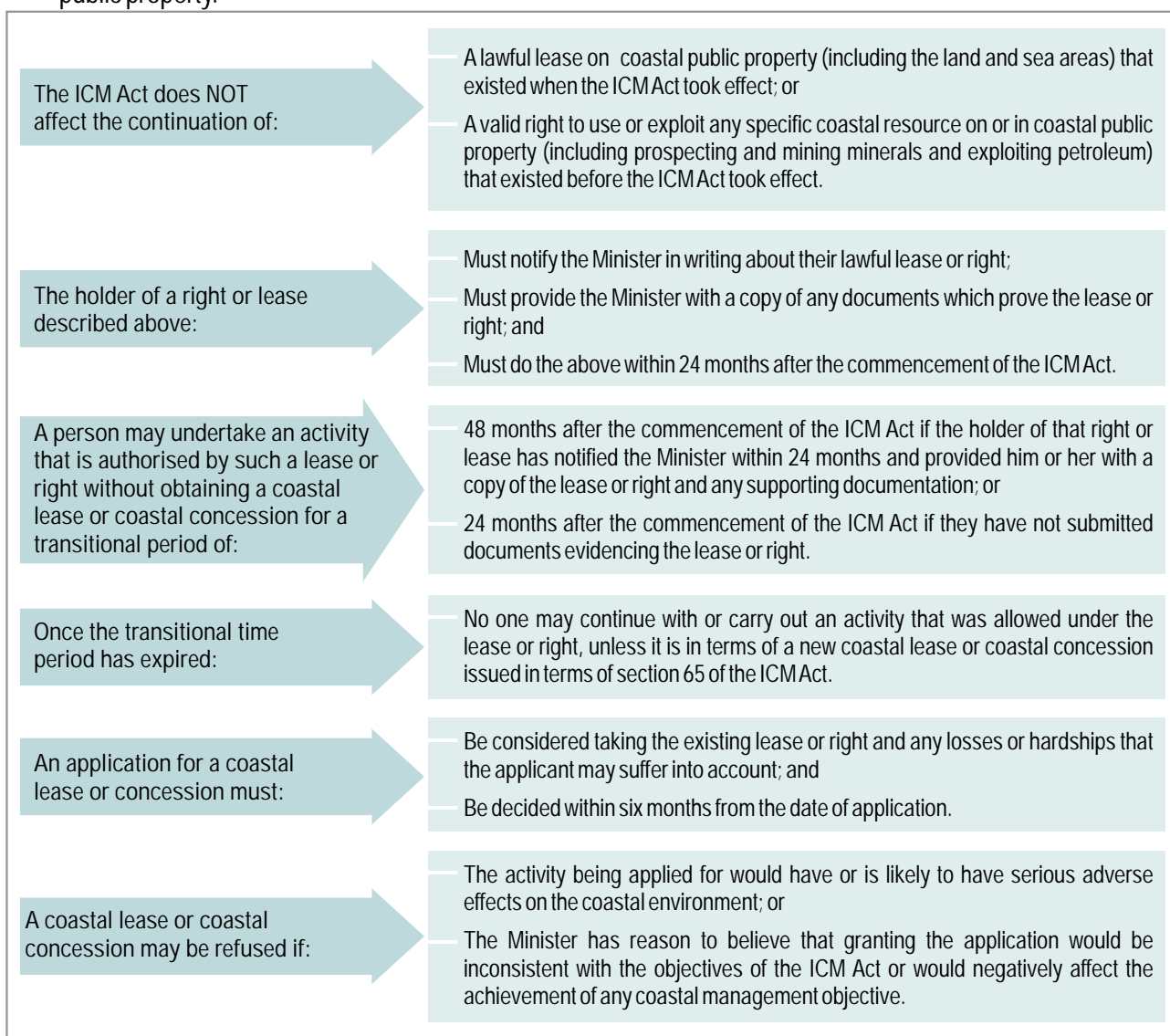


FIGURE 12.1 Transitional provisions with respect to existing rights on, and leases to coastal public property.



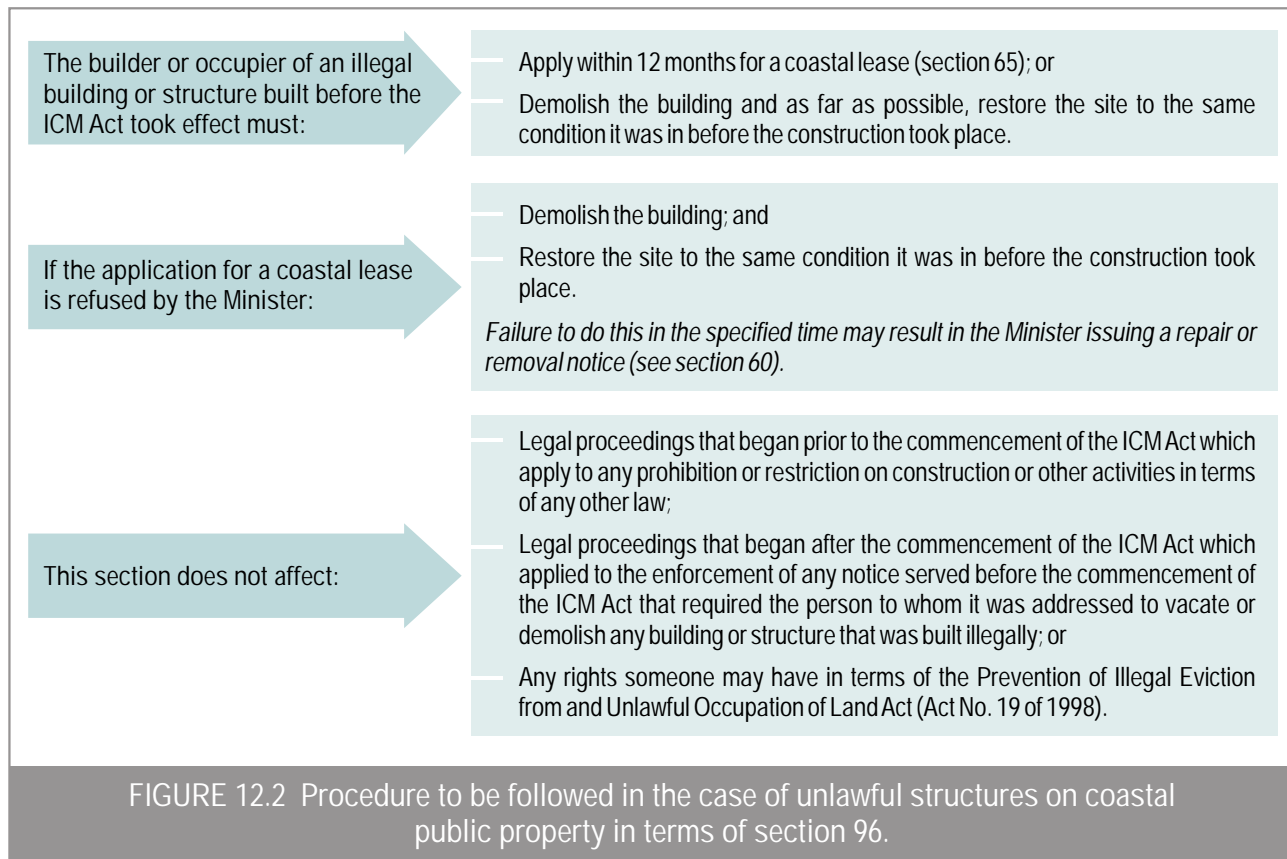
## Section 96

## 1.2 Unlawful structures on coastal public property

This section of the ICM Act requires reference to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (Act No. 19 of 1988, see Box 12.1). Further details are described in Figure 12.2 below.

## Box 12.1 Summary of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (Act No. 19 of 1998)

This Act was established to provide for the prohibition of unlawful eviction as well as the procedures for the eviction of unlawful occupiers of land.



## Section 97

## 1.3 Existing lawful activities in the coastal zone

For 24 months after the commencement of the ICM Act, anyone who was lawfully engaged in the activities specified below must be thought of as the holder of an environmental authorisation for:

- Activities in the coastal zone that require an environmental authorisation; or
- Abstracting water from coastal waters.

Anyone who falls into the above category and who, within 24 months, applies for an environmental authorisation must be regarded as the holder of the authorisation until the competent authority decides whether or not to grant the application. This section does not apply to:

- The powers of an issuing authority under section 68 to amend (adjust), revoke (remove), suspend (postpone) or cancel an authorisation issued in terms of the ICM Act; or
- Any obligation (duty) that a person may have under section 96.



#### 1.4 Repeal of other legislation

Section 98 refers to laws, or sections thereof, repealed by the ICM Act. It indicates in Schedule 1 of the ICM Act that the Sea Shore Act (Act No. 21 of 1935), apart from sections assigned to the provinces, and the whole of the Dumping at Sea Control Act (Act No. 73 of 1980) are repealed.



#### 1.5 Savings

Subject to Section 6 of the ICM Act (see Box 12.2), any regulation made in terms of a provision of the Acts repealed under the section described above is still valid if it is consistent with the ICM Act. This also applies to anything else done in terms of legislation repealed in terms of section 98 which can or must be done in terms of the ICM Act must be regarded as having been done in terms of the ICM Act.

## 2. GENERAL



#### 2.1 Limitation of liability

Neither the State nor any other person is liable (legally responsible) for any damage or loss caused by:

- The exercise of any power or the performance of any duty in terms of the ICM Act; or
- The failure to exercise any power or perform any duty in terms of the ICM Act, unless the failure to do so was unlawful, negligent or in bad faith.

The ICM Act takes effect on a date or dates chosen by the President of South Africa by a proclamation in the *Government Gazette*.

#### Box 12.2 ICM Act section 6

If there is a conflict relating to coastal management between any other legislation and the ICM Act, the ICM Act prevails. Furthermore, a provision contained in the ICM Act or the NEMA, or in regulations made or authorisations issued under either Act prevails if there is a conflict between that provision and a provision contained in regulations or in an authorisation that has been saved in terms of section 99. Draft legislation which amends the ICM Act or provides for conflicting, subordinate legislation may only be introduced by the Minister, or after consultation with the Minister.



# SCHEDULES





## 1. SCHEDULE 1: LAWS REPEALED



Section 98

This section describes the laws that have been repealed (replaced) by the ICM Act. These are the Sea-shore Act (Act No. 21 of 1935) and the Dumping at Sea Control Act (Act No.73 of 1980). The Sea-shore Act (Act No. 21 of 1935), apart from sections assigned to provinces, has been repealed, while the Dumping at Sea Control Act (Act No. 73 of 1980) has been repealed in its entirety. It is foreseen that the sections assigned to provinces will eventually be repealed by the provinces as the ICM Act will prevail.

## 2. SCHEDULE 2: WASTE ASSESSMENT GUIDELINES



Section 71

This part of the ICM Act provides guidelines for reducing the need to dump waste at sea. Schedule 2 is summarised below. References to paragraphs below mean paragraphs in the Schedule.

### 2.1 Waste prevention audit

Before deciding to dump at sea, alternatives should first be considered. The initial stages in assessing alternatives to dumping at sea should, as appropriate, include an evaluation of various factors as indicated in paragraph 2. If the required audit reveals that opportunities exist for waste prevention at its source, an applicant for a permit is expected to formulate and implement a waste prevention strategy (details in paragraph 3). For dredged material and sewage sludge, the goal should be to identify and control the sources of contamination as indicated in paragraph 4. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

### 2.2 Consideration of waste management options

Applications to dump wastes or other material must show that applicants have considered the hierarchy of waste management options, as indicated in paragraph 5. The Minister will refuse to grant a permit if the circumstances in paragraph 6 apply.

### 2.3 Chemical, physical and biological properties

Waste must be characterised and described in detail for the consideration of alternatives and the basis for a decision as to whether waste may be dumped. Characterisation of the wastes and their constituents must take into account the factors provided in paragraph 7.

### 2.4 Action List

In selecting substances for consideration in the Action List referred to in section 73, the Minister will give priority to certain substances as indicated in paragraph 8. The Action List must specify certain levels and its application will result in three categories of waste as indicated in paragraph 9.

### 2.5 Dump-site selection

Paragraph 10 outlines the information which the Minister will require before deciding whether or not to approve a site for dumping at sea.

### 2.6 Assessment of potential effects

An assessment of potential effects is required to provide a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements. Such an assessment should meet the requirements provided in paragraphs 11, 12 and 14. Requirements for the consideration of



## 2.7 Monitoring

Monitoring includes compliance monitoring and field monitoring (see paragraph 15). It is essential that such monitoring programmes have clearly defined objectives.

## 2.8 Permit and permit conditions

A decision to issue a permit will only be taken if all impact evaluations are completed and the monitoring requirements are determined. The conditions of the permit must ensure, as far as practicable, that adverse effects are minimised and the benefits maximised. A dumping permit issued must contain data and information as indicated in paragraph 16. The Minister will review permits for dumping at sea at regular intervals, taking into account the results of the monitoring and the objectives of monitoring programmes (see paragraph 17).





# ANNEXURE A

Definitions



(1) In the ICM Act, unless the context indicates otherwise —

"Admiralty Reserve" means any strip of land adjoining the inland side of the High-Water Mark which, when this Act took effect, was state land reserved or designated on an official plan, deed of grant, title deed or other document evidencing title or land-use rights as "Admiralty Reserve", "government reserve", "beach reserve", "coastal forest reserve" or other similar reserve;

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

"aircraft" means an aircraft as defined in terms of section 1 of the NEMA;

"authorisation" means an authorisation under this Act, and includes a coastal waters discharge permit, a general authorisation, a dumping permit, a coastal lease, a coastal concession and any authorisation that is regarded as being an authorisation under this Act, but excludes an environmental authorisation;

"Biodiversity Act" means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

"biodiversity" or "biological diversity" has the same meaning ascribed to it in the Biodiversity Act;

"coastal access land" means land designated as coastal access land in terms of section 18(1), read with section 26;

"coastal activities" means coastal activities listed or specified in terms of Chapter 5 of the NEMA which take place in the coastal zone;

"coastal concession" means a concession awarded in terms of section 65 read with section 95;

"coastal environment" means the environment within the coastal zone;

"coastal lease" means a lease awarded in terms of section 65 read with section 95;

"coastal management" includes —

- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;
- (b) the regulation and management of the use and development of the coastal zone and coastal resources;
- (c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and
- (d) planning in connection with the activities referred to in paragraphs (a), (b) and (c);

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



"coastal management programme" means the National or a provincial or municipal coastal management programme established in terms of Chapter 6;

"coastal planning scheme" means a scheme that —

- (a) reserves defined areas within the coastal zone to be used exclusively or mainly for specified purposes; and
- (b) prohibits or restricts any use of these areas in conflict with the terms of the scheme;

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

"coastal protection zone" means the coastal protection zone contemplated in section 17;

"coastal public property" means coastal public property referred to in section 7;

"coastal resources" means any part of —

- (a) the cultural heritage of the Republic within the coastal zone, including shell middens and traditional fish traps;  
or
- (b) the coastal environment that is of actual or potential benefit to humans;

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

"coastal waters" means —

- (a) marine waters that form part of the internal waters or territorial waters of the Republic referred to in sections 3 and 4 of the Maritime Zones Act (Act No. 15 of 1994) respectively; and
- (b) subject to section 26, any estuary;

"coastal wetland" means —

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

"coastal zone" means the area comprising coastal public property, the coastal protection zone, coastal access land and coastal protected areas, the seashore, coastal waters and the Exclusive Economic Zone and includes any aspect of the environment on, in, under and above such area;

"competent authority" means a competent authority identified in terms of section 24C of the NEMA;

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



"Department" means the national department responsible for environmental affairs;

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

- (a) the construction, erection, alteration, demolition or removal of a structure or building;
- (b) a process to rezone, subdivide or consolidate land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of indigenous or protected vegetation;

"Director-General" means the Director-General of the Department;

"dumping at sea" means—

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

"dumping permit" means a permit granted under section 71;

"dynamic coastal processes" means all natural processes continually reshaping the shoreline and near shore seabed and includes —

- (a) wind action;
- (b) wave action;
- (c) currents;
- (d) tidal action; and
- (e) river flows;

"effluent" means —

- (a) any liquid discharged into the coastal environment as waste, and includes any substance dissolved or suspended in the liquid; or
- (b) liquid which is a different temperature from the body of water into which it is being discharged;

"environment" means "environment" as defined in the NEMA;

"environmental authorisation" means an authorisation granted in respect of coastal activities by a competent authority in terms of Chapter 5 of the NEMA;

"estuary" means a body of surface water —

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

"Exclusive Economic Zone" means the Exclusive Economic Zone of the Republic referred to in section 7 of the Maritime Zones Act (Act No. 15 of 1994);

"Gazette" when used in relation to —

- (a) the Minister, means the *Government Gazette*;
- (b) the MEC means the *Provincial Gazette*; and
- (c) a municipality, means the *Provincial Gazette* of the province in which the municipality is situated;

"general authorisation" means an authorisation under section 69(2);

"High-Water Mark" means the highest line reached by coastal waters, but excluding any line reached as a result of —

- (a) exceptional or abnormal floods or storms that occur no more than once in ten years; or
- (b) an estuary being closed to the sea;

"incinerate at sea" means the deliberate combustion of any material on board a vessel, platform or other man-made structure at sea for the purpose of disposing of it by thermal destruction, but does not include the combustion of operational waste from a vessel, aircraft, platform or other man-made structure at sea;

"interests of the whole community" means the collective interests of the community determined by —

- (a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;
- (b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and
- (c) taking into account the interests of other living organisms that are dependent on the coastal environment;

"issuing authority" means the authority designated in terms of this Act to issue authorisations;

"land development plan" means any plan that is prepared or approved in terms of legislation regulating land development and that indicates the desirable uses for areas of land but does not create legal rights to use land;

"Land Survey Act" means the Land Survey Act (Act No. 8 of 1997);

"land use scheme", in relation to an area, means a scheme established by or under legislation and that creates or regulates the use of land in that area, and includes a land use scheme, a town planning scheme, a zoning scheme and any other similar instrument that identifies or regulates rights to use land;

"littoral active zone" means any land forming part of, or adjacent to, the seashore that is —

- (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;

"Local Community" means any community of people living, or having rights or interests, in a distinct geographical area within the coastal zone;

"Low-Water Mark" means the lowest line to which coastal waters recede during spring tides;

"Marine Living Resources Act" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

"MEC" means the member of the Executive Council of a coastal province who is responsible for the designated provincial lead agency in terms of this Act;

"Minister" means the Minister responsible for environmental affairs ;

"municipality"—

- (a) means a metropolitan, district or local municipality established in terms of the Local Government: Municipal Structures Act (Act No. 117 of 1998); or
- (b) in relation to the implementation of a provision of this Act in an area which falls within both a local municipality and a district municipality, means —
  - (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 (Act No. 32 of 2000);

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

"National Estuarine Management Protocol" means the national protocol concerning the management of estuaries contemplated in section 33;

"National Water Act" means the National Water Act (Act No. 36 of 1998);

"operational waste"—

- (a) means any waste or other material that is incidental to, or derived from, the normal operation of a vessel, aircraft, platform or other man-made structure and its equipment; and
- (b) excludes any waste or other material that is transported by or to a vessel, aircraft, platform or other man-made structure which is operated for the purpose of disposing of that waste or other material, including any substances derived from treating it on board, at sea;

"organ of state" has the meaning assigned to it in section 239 of the Constitution;

"pollution" has the meaning assigned to it in section 1 of the NEMA;

"prescribe" means prescribe by regulation;

"protected area" means a protected area referred to in section 9 of the Protected Areas Act (Act No. 57 of 2003);

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

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

"sea" means all marine waters, including—

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

"seashore", subject to section 26, means the area between the Low-Water Mark and the High-Water Mark;

"South African aircraft" means any aircraft registered in the Republic in terms of applicable legislation;

"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;

"this Act" includes any regulation made in terms of this Act;

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

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

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

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

"Waste Assessment Guidelines" means the guidelines set out in Schedule 2; and

"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 the ICM Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates otherwise.







# ANNEXURE B

Additional Information



## 1. POLICY

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Department of Environmental Affairs and Tourism, 2000. *White Paper for Sustainable Coastal Development in South Africa*. Printed for the Government Printer by Formset Printers, Cape Town, pp. 137.

Department of Environmental Affairs and Tourism, 1998. *Coastal Policy Green Paper: Towards Sustainable Coastal Development in South Africa*. Wynland Printers, Cape Town, pp. 155.

## 2. LEGISLATION

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Expropriation Act, Act No. 57 of 1975. Cape Town: Government Printer pp. 21.

Land Survey Act, Act No. 8 of 1997. Cape Town: Government Printer, pp. 28.

Marine Living Resources Act, Act No. 18 of 1998. Cape Town: Government Printer, pp. 34.

Maritime Zones Act, Act No. 15 of 1994. Cape Town: Government Printer, pp. 12.

National Environmental Management Act, Act No. 107 of 1998. Cape Town: Government Printer, pp. 37.

National Environmental Management: Integrated Coastal Management Act, Act No. 24 of 2008. Cape Town: Government Printer, pp. 64.

National Environmental Management: Protected Areas Act, Act No. 57 of 2003. Cape Town: Government Printer, pp. 26.

National Water Act, Act No. 36 of 1998. Cape Town: Government Printer, pp. 101.

## 3. LITERATURE

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Glavovic, B.C., 2006. The evolution of coastal management in South Africa: why blood is thicker than water. *Ocean & Coastal Management*, 49, pp. 889–904.

## 4. SUGGESTED READING

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Council for the Environment, 1989. *A Policy for Coastal Zone Management in the Republic of South Africa. Part 1: Principles and Objectives*. Joan Lötter Publications, Pretoria.

Council for the Environment. 1991. *A Policy for Coastal Zone Management in the Republic of South Africa – Part 2: Guidelines for Coastal Land-use*. Academica Publishers, Pretoria.

Glavovic, B.C. 2000a. *Our Coast, Our Future: A New Approach to Coastal Management in South Africa*. Department of Environmental Affairs and Tourism, Cape Town, pp. 133.

Glavovic, B.C. 2000b. *Building Partnerships for Sustainable Coastal Development: The South African Coastal Policy Formulation Experience: The Process, Perceptions and Lessons Learned*. Department of Environmental Affairs and Tourism, Cape Town, pp. 133.

Glazewski, J. 1997. *Towards a Coastal Zone Management Act for South Africa*. *The South African Journal of Environmental Law and Policy*, 4, pp.1-22.

Sowman, M. R. 1993. The status of Coastal Management in South Africa. *Coastal Management*, 21, pp.163-184.

Earth Summit: Agenda 21. 1999. *Programme of Action for Sustainable Development*. United Nations Department of Public Information, pp. 294.

## 5. OTHER TITLES IN THIS SERIES MAY INCLUDE:\*

1. A Summary Guide to South Africa's Integrated Coastal Management Act
2. A Compliance Monitoring and Enforcement Strategy to South Africa's Integrated Coastal Management Act
3. An Enforcement Manual to South Africa's Integrated Coastal Management Act
4. The South African Coastal Water Quality Guide series
5. South African Guidelines for Assessment and Management of Dredged Materials
6. A Guide to the Functioning of South Africa's Coastal Committees
7. A Guide to South Africa's Coastal Planning Schemes
8. A Guide to the Development of South Africa's Coastal Management Programmes
9. A Guide to South Africa's Demarcation and Adjustment of Coastal Boundaries and Set-back Lines
10. South Africa's Guidelines for State of the Coast Reporting and Coastal Standards

\*Please note that the titles of the guidelines mentioned above are subject to change and that notification of the release dates will be advertised in print and electronic media, also available shortly for downloading at <http://www.deat.gov.za>.

## 6. TOWARDS IMPLEMENTATION OF THE ICM ACT

As the National Lead Agent for integrated coastal management in South Africa, the Department of Environmental Affairs has an obligation to ensure effective implementation of the ICM Act. Working together with other government stakeholders, the department has embarked on a number of initiatives that are specifically designed to ensure the effective implementation of the ICM Act. These include, for example:

- A detailed analysis of each section of the ICM Act to determine priorities, key activities, target dates and responsibilities;
- Development of detailed action plans for all identified priorities;
- Development of an enforcement strategy and enforcement manual for the ICM Act;
- Development of regulations in support of the ICM Act;
- Development of a South African Coastal Information System;
- Refinement of the draft National Estuarine Management Protocol;
- Development of Guides, for example a summary guide in the four coastal languages, a guide to coastal management programmes and a user-friendly guide (this guide has been developed with SSI Engineers and Environmental Consultants as a Public-Private Partnership); and
- Increasing capacity and securing of resources to provide for the effective implementation of the ICM.

Apart from the Department of Environmental Affairs, several of the coastal provinces, metros, municipalities and state organisations have also embarked on initiatives towards effective implementation of the ICM Act. These include, for example:

- Refining methodology to predict coastal erosion, taking into account sea level rise and other factors;
- Determination of coastal set-back lines;
- Adjustments of the initial coastal protection zone;
- Development of estuarine management plans;
- Undertaking an audit of current and potential coastal access land; and
- Research in support of the ICM Act.

As outlined in the White Paper for Sustainable Coastal Development in South Africa (DEAT, 2000), the involvement of all stakeholders in integrated coastal management is essential to ensure proper development of our coast. To this end the Department of Environmental Affairs is delighted to see the increasing number of private firms that have embraced the White Paper and the ICM Act. Their actions in support of the implementation of the White Paper and the ICM Act are welcomed. The initiatives of one such private firm is highlighted below on page 99. By working together resources can be shared, implementation can proceed more effectively and we will have a better chance of reaching our common vision for South Africa's coast.





ENGINEERS AND ENVIRONMENTAL CONSULTANTS

## THE SSI ENGINEERS AND ENVIRONMENTAL CONSULTANTS ICM ACT TOOLKIT AN EXAMPLE OF A PRIVATE SECTOR INITIATIVE IN SUPPORT OF THE ICM ACT\*

The ICM Act Toolkit is a product that has been conceptualised and developed by the Coastal Unit of SSI Engineers and Environmental Consultants and the company is of the opinion that it is an innovative private sector product that can assist their clients to implement certain aspects of the ICM Act. According to them, the purpose of the Toolkit is to facilitate a clear understanding of the concept of ICM as presented in the ICM Act, and to serve as a guide to assist with implementation of the Act. They foresee that the Toolkit will be customised for each implementation authority to ensure relevance and effectiveness. An outline of possible elements that can assist their clients with the implementation of the ICM Act, in a cost-effective manner, is given below:

1. **Understanding the ICM Act:**
  - Strategic background and principles;
  - Presentation of the User-friendly Guide to the ICM Act (jointly developed with the Department of Environmental Affairs);
  - Explaining the institutional and legal framework for ICM;
  - Unpacking critical and contemporary ICM issues; and
  - Implications of the ICM Act.
2. **Initiating Implementation:**
  - A prioritised checklist of actions to be taken by authorities;
  - Defining your coastal zone and coastal uses;
  - Managing coastal and shoreline access; and
  - Deciding on coastal management tools – IDP, SDF, CMP, *quo vadis?*
3. **Building a team for ICM:**
  - Building internal competency (human and other resources);
  - Understanding institutional frameworks for coastal management; and
  - Exploring possible partnerships and institutional structures.
4. **Looking to the future:**
  - Measuring success – are you making a difference?;
  - Planning for long-term effective ICM; and
  - Climate change – what you need to know.
5. **Templates and appendices:**
  - Case studies and reference materials; and
  - Suggested terms of reference.

### OTHER PRODUCTS

The Coastal Unit of SSI Engineers and Environmental Consultants also offer a one-day introductory training course that will familiarise the attendees with the ICM Act, its content and requirements. The course is interactive and includes training material and other useful ICM reference material, and can be offered at a variety of venues including implementing agency offices. For more details contact the company via e-mail (tandib@ssi.co.za or louisc@ssi.co.za) or on +2731 719 5500. For more details about SSI Engineers and Environmental Consultants see <http://www.ssi-dhv.com>.

*\*The inclusion of Information in this guide does not imply endorsement by the Department of Environmental Affairs or any other organ of state.*

