

AN UPDATED USER-FRIENDLY GUIDE TO

SOUTH AFRICA'S INTEGRATED COASTAL MANAGEMENT ACT



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This document does not in any way have legal authority or take precedence over the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICM Act) nor does it purport to stand in the place of or substitute any of the wording and provisions of the ICM Act but rather serves as a guideline to the development of coastal management programmes, expanding on the provisions of such contained in 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. However, please note that 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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ABBREVIATIONS AND ACRONYMS

CBO:	Community-based organisation
CML:	Coastal Management Line
CMP:	Coastal Management Programme
CPP:	Coastal Public Property
CPZ:	Coastal Protection Zone
DEA:	Department of Environmental Affairs
ECA:	Environment Conservation Act, 1989 (Act No. 73 of 1989)
EEZ:	Exclusive Economic Zone
EIA:	Environmental Impact Assessment
EMP:	Estuarine Management Plan
EMPr:	Environmental Management Programme
HWM:	High-Water Mark
I&AP:	Interested and affected party
ICM:	Integrated Coastal Management
ICM Act:	National Environmental Management Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)
IDP:	Integrated Development Plan
IMO:	International Maritime Organisation
MCC:	Municipal Coastal Committee
MEC:	Member of Executive Committee
MLRA:	Marine Living Resources Act, 1998 (Act No. 18 of 1998)
MSA:	Municipal Systems Act, 2000 (Act No. 32 of 2000)
NCC:	National Coastal Committee
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)
NEMPAA:	National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)
NGO:	Non-governmental organisation
PCC:	Provincial Coastal Committee
SDF:	Spatial Development Framework
SEMA:	Specific Environmental Management Acts
SPLUMA:	Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013)
The Protocol:	The National Estuarine Management Protocol, Government Notice No. 341 of 10 May 2013, published in Government Gazette No. 36432

TABLE OF CONTENTS

An Updated User-friendly Guide to South Africa's Integrated Coastal Management Act i

Introduction To The User-Friendly Guide 1

1. AN UPDATED USER-FRIENDLY GUIDE TO THE ICM ACT..... 1
2. INTEGRATED COASTAL MANAGEMENT 1
3. HOW TO USE THIS GUIDE..... 4

Introduction to the ICM Act. 6

1. LONG TITLE AND PREAMBLE 6
2. PRINCIPLES FOR COASTAL MANAGEMENT 8
3. CHAPTERS OF THE ICM ACT 9
4. ROLES AND RESPONSIBILITIES 11

Chapter 1 - Interpretation, Objectives and Application of the ICM Act. 17

1. DEFINITIONS (SECTION 1) 17
2. OBJECTIVES OF THE ICM ACT (SECTION 2) 17
3. OVERARCHING COASTAL DUTIES OF THE STATE (SECTION 3) 18
4. APPLICATION OF THE ICM ACT (SECTION 4) 19
5. ICM ACT, THE NEMA AND OTHER LEGISLATION (SECTIONS 5 AND 6) 20

Chapter 2 - The Coastal Zone 23

1. THE 'COASTAL ZONE' 23
2. COASTAL PUBLIC PROPERTY (SECTIONS 7, 11 AND 12) 24
3. THE COASTAL PROTECTION ZONE 31
4. COASTAL ACCESS LAND (SECTIONS 18-20) 33
5. COASTAL WATERS (SECTION 21) 37
6. COASTAL PROTECTED AREAS (SECTION 22) 37
7. SPECIAL MANAGEMENT AREAS (SECTION 23) 38
8. ESTABLISHMENT OF COASTAL MANAGEMENT LINES (SECTION 25) 39

Chapter 3 - Boundaries of Coastal Areas 43

1. DETERMINATION AND ADJUSTMENT OF COASTAL BOUNDARIES (SECTIONS 26 – 29) 43
2. ENTRY ONTO LAND (SECTION 30) 46
3. MARKING COASTAL BOUNDARIES ON ZONING MAPS (SECTION 31) 46
4. ENDORSEMENTS BY REGISTRAR OF DEEDS (SECTION 32) 46

Chapter 4 - Estuaries. 49

1. NATIONAL ESTUARINE MANAGEMENT PROTOCOL (SECTION 33) 49
2. ESTUARINE MANAGEMENT PLANS (SECTION 34) 51

Chapter 5 - Institutional Arrangements 55

1. NATIONAL COASTAL COMMITTEE (SECTIONS 35-37) 55
2. DESIGNATION AND FUNCTIONS OF PROVINCIAL LEAD AGENCY (SECTION 38) 58
3. PROVINCIAL COASTAL COMMITTEES (SECTIONS 39-41) 59

4. MUNICIPAL COASTAL COMMITTEES (SECTION 42).....	61
5. VOLUNTARY COASTAL OFFICERS (SECTION 43).....	61

Chapter 6 - Coastal Management 63

1. COASTAL MANAGEMENT PROGRAMMES (CMPs)	63
2. COORDINATION AND ALIGNMENT OF PLANS AND CMPs (SECTIONS 51 AND 52).....	66
3. PUBLIC PARTICIPATION (SECTION 53).....	67
4. REVIEW OF COASTAL MANAGEMENT PROGRAMMES (SECTIONS 54 AND 55).....	67
5. COASTAL PLANNING SCHEMES (SECTIONS 56 AND 57).....	69

Chapter 7 - Protection of Coastal Environment 73

1. ASSESSING, AVOIDING AND MINIMISING ADVERSE EFFECTS.....	73
2. IMPLEMENTATION OF LAND-USE LEGISLATION IN THE COASTAL PROTECTION ZONE (SECTION 62)..	77
3. ENVIRONMENTAL AUTHORISATIONS FOR COASTAL ACTIVITIES (SECTION 63).....	78
4. USE OF COASTAL PUBLIC PROPERTY	81
5. GENERAL PROVISIONS	82

Chapter 8 - Marine and Coastal Pollution Control. 85

1. DISCHARGE OF EFFLUENT INTO COASTAL WATERS (SECTION 69).....	85
2. PROHIBITION OF INCINERATION OR DUMPING AT SEA (SECTIONS 70 - 72).....	88
3. NATIONAL ACTION LIST (SECTION 73).....	89

Chapter 9 - Appeals 93

1. APPEALS (SECTIONS 74, 75 AND 77).....	93
2. INTERIM ORDERS BY THE MINISTER OR AN MEC (SECTION 76).....	96
3. DETERMINATION OF APPEAL BY THE MINISTER OR MEC (SECTION 78).....	97

Chapter 10 – Enforcement 101

1. OFFENCES AND PENALTIES IN TERMS OF THE ICM ACT (SECTIONS 79 AND 80).....	102
2. JURISDICTION OF COURTS (SECTION 81).....	104
3. ACTIONS IN RELATION TO THE COASTAL ZONE (SECTION 82).....	105

Chapter 11 - General Powers and Duties 107

1. REGULATIONS.....	107
2. POWERS TO BE EXERCISED BY THE MEC.....	112
3. DELEGATIONS AND ENFORCEMENT.....	113
4. GENERAL MATTERS.....	116
5. EXEMPTIONS (SECTION 94A):.....	119

Chapter 12 - Miscellaneous matters 121

1. TRANSITIONAL PROVISIONS.....	121
2. GENERAL SCHEDULES.....	124
3. SCHEDULE 1: LAWS REPEALED	124
4. SCHEDULE 2: WASTE ASSESSMENT GUIDELINES.....	124

Schedules. 127

Annexures 131

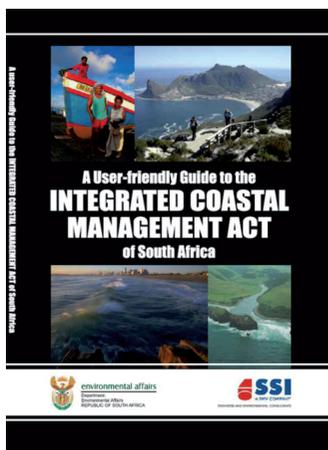
INTRODUCTION TO THE USER-FRIENDLY GUIDE



INTRODUCTION TO THE USER-FRIENDLY GUIDE

1. An Updated User-friendly Guide to the ICM Act

The Acts of Parliament are at times difficult to understand, and the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (hereafter the “ICM Act”) is no exception. It is with this in mind that a User-friendly Guide to the ICM Act was developed in 2009 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 was therefore to make the ICM Act accessible 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. The Guide was 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.



Subsequently, various legislative and administrative processes have taken their course, resulting in further refinement of the ICM Act and the guidance that it provides. Importantly, the promulgation of the National Environmental Management: Integrated Coastal Management Amendment Act (Act No. 36 of 2014) in 2014 means that certain provisions of the ICM Act have been revised, or even replaced or deleted, and that certain new components were added.

With the above in mind, the authors of the original User-friendly Guide have deemed it fitting to compile an updated Guide, reflecting the changes to the ICM Act as well as particularly relevant contextual developments.

2. Integrated Coastal Management

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.



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. These Green Papers and White Papers are obtainable from the document portal on the Department of Environmental Affairs website (<http://www.environment.gov.za>).

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 (see Box A) as well as the White Paper for Sustainable Coastal Development in South Africa.

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 co-ordinated, 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.

In 2014, the National Coastal Management Programme of South Africa (NCMP) was adopted. As detailed in the NCMP, it 'provides national direction and guidance towards a structured and standardised approach to coastal management in South Africa, including an appropriate cooperative governance framework'. The NCMP identifies national strategies, and norms and standards still to be developed towards achieving the vision and management objectives as detailed in the programme. Priorities identified in the NCMP are detailed in Figure 1.



Figure 1: National Coastal Management Act Priorities, 2014

The ICM Act was amended via the National Environmental Management: Integrated Coastal Management Amendment Act, 2014 (Act No. 36 of 2014), in *Government Gazette* 38171 dated 31 October 2014 with its commencement date set at 1 May 2015. This amendment:

- Revised and clarified certain definitions and terminology, ensured consistency and corrected errors;
- Excluded the provision allowing the substitution of the high water mark with a straight line boundary and aligned issues relating to erosion and accretion and EIAs with NEMA and other SEMAs;
- Expanded and/or simplified various provisions (reclamation, coastal access provisions & designation etc.);
- Clarified coastal public property, removed the power to exclude areas and ensured that ownership of assets and operations of other organs of state were not impacted;
- Clarified the composition of the coastal protection zone with particular reference to flooding from the sea (1:100 year floodline replaces 1:50 year floodline) and allowed the Minister the power to excise national protected areas;
- Reduced the confusion with EIA development set-back lines by renaming coastal set-back lines as coastal management lines as well as giving the MEC the power to publish a notice in the *Gazette* to establish or change a coastal management line;
- Provided additional detail in respect to Estuarine Management Plans and the National Estuarine Management Protocol;

- Streamlined the provisions of the National Coastal Committee to create more flexibility;
- Incorporated the exclusionary criteria for EIAs as part of the general criteria;
- Replaced coastal leases and concessions with coastal use permits and simplified the administrative procedures involved in issuing them;
- Expanded categories of activities requiring dumping permits;
- Revised offences and increase penalties; and
- Provided for exemptions from certain provisions for organs of state.

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.

It must be noted that some sections of the ICM Act were amalgamated for the purpose of the Guide, in order to facilitate understanding and for ease of reference. While every effort was made to adhere to the original structure of the Act as far as is practicable, 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.

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 Amendments effected through the ICM Act in 2014

Orange text is used to identify significant changes to the ICM Act, such as new inclusions or deletions, given effect through the promulgation of the ICM Amendment Act in 2014.

Additional detail in respect to the amendments affected is detailed as illustrated in the adjacent text box.

NEW: xxx

3.3 Disclaimer and direct references to the Act

This Guide must be read in conjunction with the official gazetted version of the ICM Act and its subsequent 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 (www.gov.za) or from the Department of Environmental Affairs (DEA) website (www.environment.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.

Also important to note is that unless otherwise specified, references to the “ICM Act” refer to the original act as well as subsequent amendments.

3.4 Other legislation

The ICM Act is a specific environmental management act under the umbrella National Environmental Management Act, 1998 (Act No. 107 of 1998)(NEMA). The broad spectrum of issues covered by the ICM Act necessitates links to other legislation. The complete gazetted documents are available via hyperlinks from the document portal of the South African government website (www.gov.za).

3.5 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, illustrated by the adjacent example (Box B). 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, 1998 (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.

This includes:

- Fishing rights
- Boat based whale and dolphin watching
- White shark cage diving

3.6 ‘Must’ vs. ‘May’ in terms of the ICM 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 7B it says that *“Before making a decision in terms of this section, the Minister must consult with any organ of state that may be affected by such decision.”* The appointment of the National Coastal Committee (NCC) is therefore mandatory.

INTRODUCTION TO THE ICM ACT



INTRODUCTION TO THE ICM ACT

1. 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.

1.1 Why an ICM Act?

According to the White Paper, 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 sectorial basis, with an emphasis on maximising single-purpose and exclusive use of areas and resources. Finally, coastal management was imposed in a 'top-down' manner and was focused on regulation and control. There was insufficient recognition of the diversity of our coast – biophysically, socially, economically and institutionally.

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.

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.

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 2 below illustrates the underlying rationale for the establishment of the ICM Act, adapted from the long title of the Act.



Figure 2: Rationale for the Integrated Coastal Management Act, 2008, as adapted from the Long Title

1.2 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.

- Everyone, including future generations, has the constitutional right to have the coastal environment protected;
- Integrated management of the coastal zone is essential to achieving this constitutional 'obligations' of improving the quality of life and protecting the environment;
- The coastal zone requires a dedicated and integrated management approach that acknowledges the interconnected nature of biophysical, economic, social and institutional considerations;
- Much of the rich natural heritage of our coastal zone is being wasted by

overuse, degradation and inappropriate management;

- The economic, social and environmental benefits of the coastal zone have been unfairly distributed in the past;
- A legal and institutional framework is required that defines the status of coastal land and waters, as well as the roles of the public, the State and other users of the coastal zone, and that will facilitate a co-operative and participatory approach to managing the coast; and
- Integrated coastal management must be based on a holistic understanding of the functioning of the coastal zone and evolve by learning from past experiences. Integrated coastal management 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.

2. Principles for coastal management

The ICM Act is informed by the NEMA principles as adapted for the coastal zone in the national White Paper for Sustainable Coastal Development adopted in 2000 – see Table 1 below.

Table 1: National Environmental Management Act Principles as adapted for the coastal zone of South Africa (taken from DEAT, 2000)

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

3. 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.

CHAPTER 4: Estuaries

This chapter aims to facilitate the efficient and co-ordinated management of all estuaries. This includes provisions that ensure they are managed in accordance with: (a) a National Estuarine Management Protocol (the Protocol) (see section 33) approved by the Minister(s) responsible for environment and water affairs; and (b) estuarine management plans (EMPs) for individual estuaries (see section 34). The Protocol which was promulgated in 2014 provides a national policy for estuary management and guides the development of individual estuarine management plans. Furthermore, it must be ensured that EMPs are aligned with the Protocol and the National Coastal Management Programme (CMP).

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 (NCC) and Provincial Coastal Committees (PCC) 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 two 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). It also deals with other matters such as the repeal of other laws (section 98, the application of which commenced on 5 February 2016 in accordance with Government Proclamation No. 5 of 2016). One of the benefits of the ICM Act is that it largely replaces two existing Acts (the Sea-Shore Act, Act No. 21 of 1935, except sections assigned to the provinces, and the entire Dumping at Sea Control Act, Act No. 73 of 1980). Section 99 saves certain regulations and actions affected by section 98.

4. Roles and Responsibilities

Roles and responsibilities of the different government agencies in respect to the implementation of the ICM Act has been identified as a matter of concern, particularly in respect to municipal responsibilities. As such clarity is provided by the NCMP.

Table 2: Overview of Roles and Responsibilities, NCMP 2014

National
· The management of coastal public property
· The National Estuarine Management Protocol
· The National Coastal Committee
· Monitor the appointment of provincial lead agencies
· Development and Implementation of the National Coastal Management Programme
· Consistency and alignment between the National Coastal Management Programme and other statutory plans
· Consultation and public participation
· Environmental authorisations for coastal waters
· Discharge of effluent into coastal waters
· Dumping of waste into coastal waters
· Emergency dumping at sea
· The National Action List
· Determination of national appeals powers
· Prescribing regulations and fees
· General provisions applicable to regulations



Provincial

- The management of the coastal protection zone
- Imposition of fees within coastal public property
- Establishment of coastal management lines
- Marking coastal boundaries on zoning maps
- Designation of provincial lead agencies
- Establishment and functioning of Provincial Coastal Committees
- Development and Implementation of Provincial Coastal Management Programmes
- Consistency and alignment between Provincial Coastal Management Programmes and other statutory plans
- Consultation and public participation
- Environmental authorisations for coastal activities
- Regulations by MECs
- Information and reporting on coastal matters
- Co-ordination of actions between provinces and municipalities

Municipal

- Access to coastal public property
- Coastal management line demarcation on zoning maps
- Determining and adjusting coastal boundaries of coastal access land
- Marking coastal boundaries on zoning maps
- Municipal CMPs
- Consistency and alignment between Municipal CMPs and other statutory plans
- Consultation and public participation
- Implementation of land use legislation in coastal protection zone

The distinction between what is required of metropolitan and district versus local municipalities is less clear. The ICM Act defines municipality as detailed in the adjacent text box D. Given this interpretation, responsibilities assigned to municipalities are automatically assigned to Metropolitan (such as eThekweni or City of Cape Town) and District municipalities (such as Namaqwa or Amathole). Should capacity exist at a local government level, district municipalities can assign certain provisions as per the processes described in the Municipal Structures Act and the Constitution.

Box D: Definition of Municipality in terms of the ICM Act

Municipality means:

A metropolitan, district or local municipality established in terms of the Local Government: Municipal Structures Act (Act No. 117 of 1998); or

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 —

The district municipality; or

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.

Note that it is highly recommended that District and Local municipalities come to an agreement regarding who has the best capacity and resources to fulfill required functions and establish written agreements accordingly.

From a finance perspective, funding the implementation of the applicable sections of the ICM Act that have been assigned to local government should be undertaken using budgets motivated for via the Medium Term Revenue Framework (MTRF). Additional funding for coastal management implementation projects has been made available via the Department of Environmental Affairs Environmental Protection and Infrastructure Programmes (EPIP), specifically the Working for the Coast Programme.

CHAPTER 1: INTERPRETATION, OBJECTIVES AND APPLICATION OF THE ICM ACT



CHAPTER 1 - 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 ICM Act, the duties of the state to fulfil environmental rights, application of the ICM 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.

1. Definitions (Section 1)

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).

NEW: Certain definitions are amended, including technical improvements, to clarify their meanings and usage. New terms are added and defined.

2. Objectives of the ICM Act (Section 2)

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

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.

Box 1.1: Spheres of government and their political and administrative representatives:

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

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, sectorial 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 (see Box 1.2).

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. 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 definition in this case. 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.

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).
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.
5. Establishment of the coastal protection zone - The ICM Act provides guidance for the establishment, use and management of the coastal protection zone (CPZ).

NEW: The coastal protection zone was previously omitted

6. 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.

3. Overarching Coastal 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 (Constitution of the Republic of South Africa Act, Act No. 108 of 1996), 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.

4. 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 coastal waters, as well as the Prince Edward Islands (including Marion Island). The provisions of the ICM Act that relate to dumping or incineration at sea also apply to South African vessels or aircraft outside the borders of the Republic.

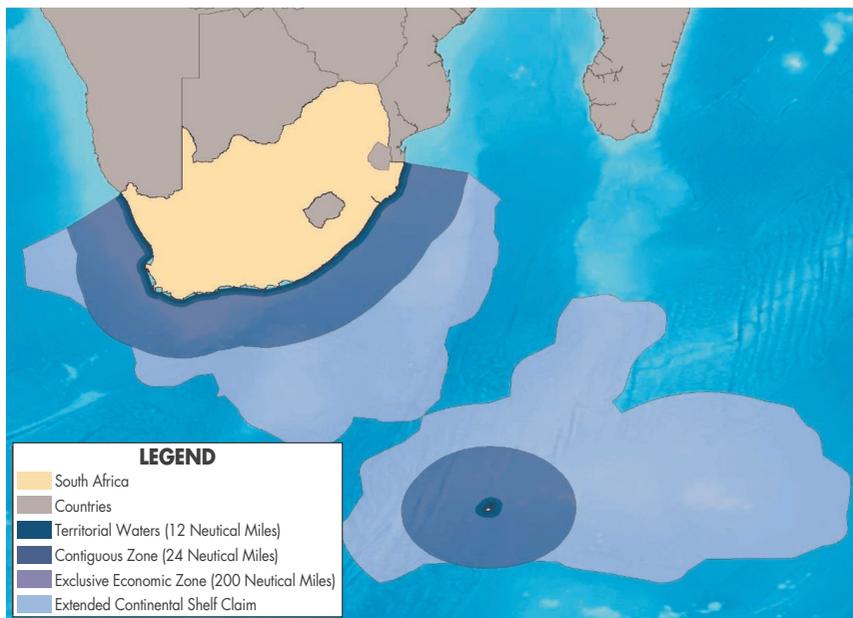


Figure 3: Maritime zones guide

5. ICM Act, the NEMA and other legislation (Sections 5 and 6)

As a Specific Environmental Management Act (SEMA), under the over-arching umbrella of NEMA, the ICM Act must be read in conjunction with 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 NEMA. However, in terms of potential conflict between other laws and the ICM Act, the ICM Act makes it clear that if the conflict relates to a coastal management issue, the ICM Act will prevail. Further, any draft 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 4 below.

Importantly, provisions relating to coastal public property do not affect the pre-existing mandate of organs of state in respect of the ownership or the control, use, and management of infrastructure and any portion of the sea space. This allows them to continue to operate within their mandate in this space.

NEW: Subsection 4 was added to provide clarity on ownership and status of assets owned by organs of state within coastal public property (CPP)



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)
- 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 national 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).

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.

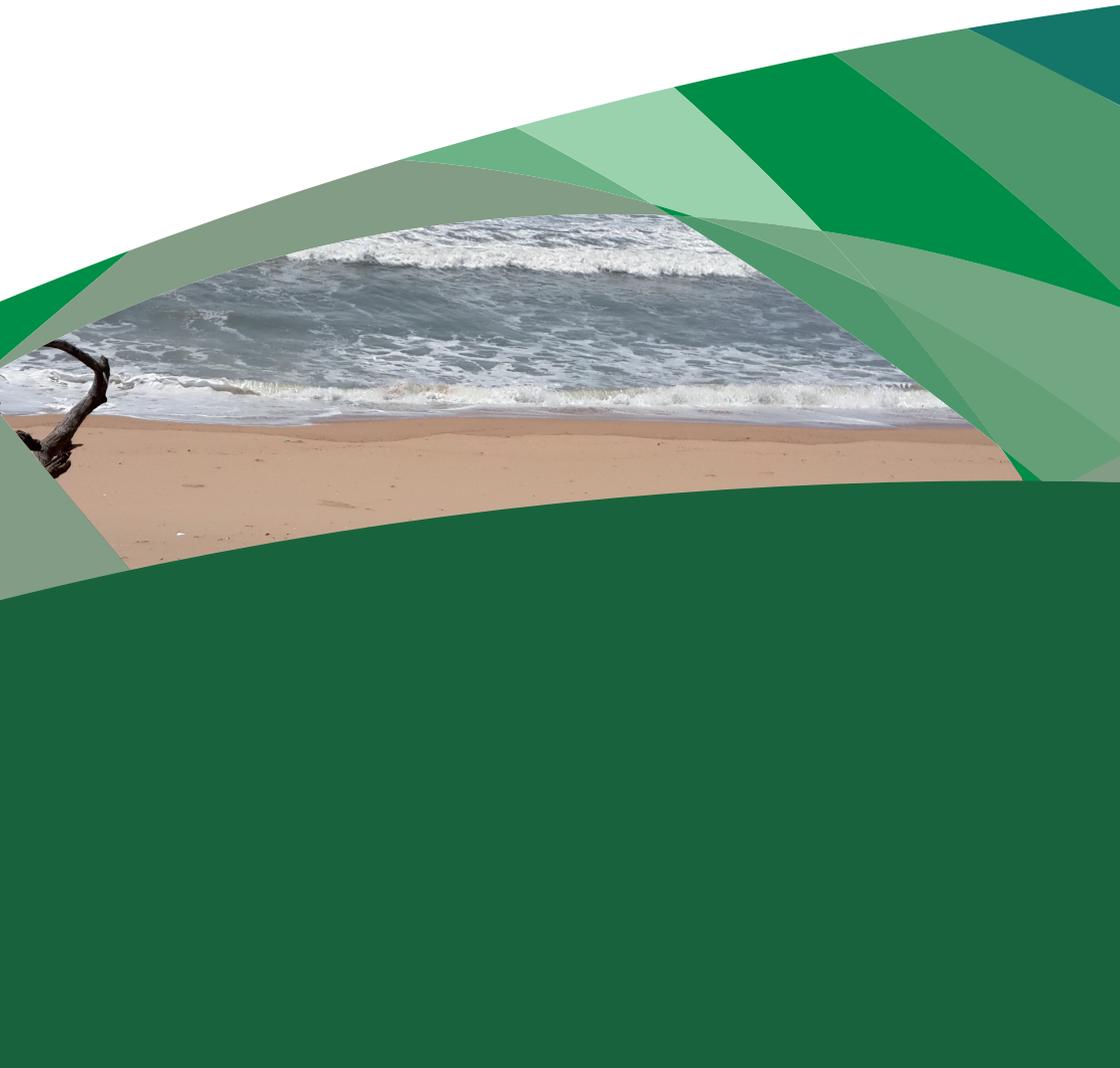
Box 1.5: Focus of Chapter 4 of the NEMA:

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.

Figure 4: The relationship between the ICM Act, the NEMA, and other legislation including potential conflict and amendment procedures

CHAPTER 2

THE COASTAL ZONE



CHAPTER 2 - 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, without a clear and consistent understanding of the constituents of the ‘coastal zone’, management and regulation of human activity is fraught with uncertainty. 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 introduces new and useful concepts and firmly highlights the important management units of the coast, its ownership and the responsibility of the State. It also deals with the definition and legal status of the various spatial aspects that make up the coastal zone of South Africa. Heed should also be taken of Chapter 3 of the ICM Act which describes the process by which coastal boundaries must be determined and adjusted.

1. The ‘coastal zone’

An understanding of the ‘coastal zone’ and the different regulatory prescriptions or management responsibilities has to start with a comprehension of the different spatial components comprising this zone.

These include:

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

Figure 5 provides a graphic illustration of where these components are found within the coastal zone.

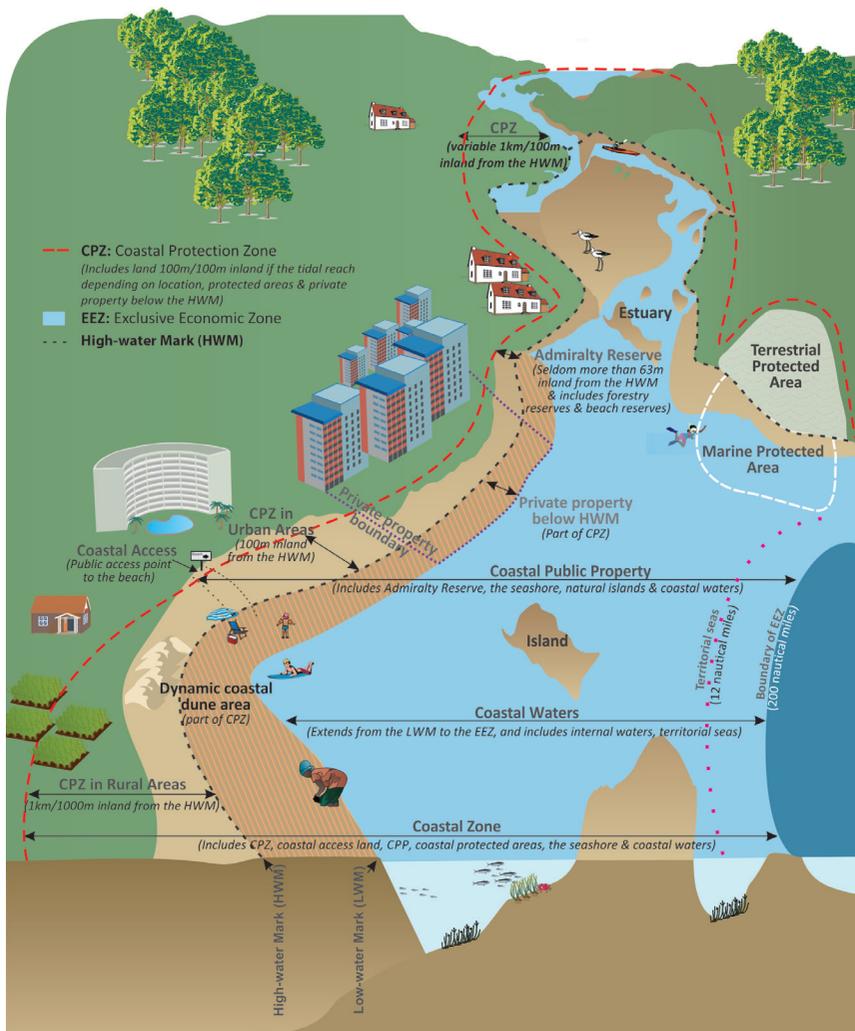


Figure 5: The coastal zone of South Africa (After EDTEA/ORI: KZN Coastal Management Programme)

2. Coastal public property (Sections 7, 11 and 12)

The use of the term “coastal public property” (CPP) 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 CPP 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. 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.

Table 3 describes the areas that constitute coastal public property. 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. **Additional clarity is now provided in terms of what is excluded from coastal public property – in particular, state assets and infrastructure.**

Table 3: 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 (terrestrial water and all harbours), territorial waters, exclusive economic zone and continental shelf (all as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994)), including estuaries.
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 natural island in coastal waters:	Any natural island (no exceptions, and not including artificial islands).
The seashore:	The area between the Low-Water Mark and the High-Water Mark, including the seashore of a natural or reclaimed island and the seashore of reclaimed land.

Coastal public property includes the following:	Description
Any Admiralty Reserve owned by the State (Subject to Section 66A which relates to leasing of Admiralty Reserve land):	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 “admiralty reserve”, “government reserve”, “beach reserve”, “coastal forest reserve” or other similar reserve.
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 the objectives of having coastal public property outlined in Section 7A. The process to do so is explained in Section 8.
Land reclaimed for other purpose:	Reclamation of land for purposes other than the development of state infrastructure will only be considered in exceptional circumstances which are not in conflict with the purpose of coastal public property.
Any natural resources:	Any natural resources on or in coastal public property as described above

COASTAL PUBLIC PROPERTY EXCLUDES THE FOLLOWING:

Any assets lawfully constructed by organs of state	Any immovable structure or part of an immovable structure or installation or infrastructure located in a port or harbour, whether located on land or the sea bed.
Any lawfully alienated land <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>NEW: Section 7 is amended to clarify that Coastal Public Property does not include assets of infrastructure above or below the HWM, and is rearranged to clearly state what does and does not form part of Coastal Public Property</p> </div>	Lawfully alienated (transferred or sold) land may include: <ul style="list-style-type: none"> · Any portion of the seashore below the high-water mark; · Any part of an island; or · Any portion of a coastal cliff that is not owned by the State.

2.1 What is the purpose of coastal public property? (Section 7A)

Coastal public property is established:

- To improve coastal public access to the seashore;
- To protect sensitive coastal ecosystems;
- To secure the natural functioning of dynamic coastal processes;
- To protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise; and
- To facilitate the achievement of any of the objects of the ICM Act.

NEW: The purpose of Coastal Public Property was previously omitted and is now included.

2.2 Reclamation of land for state infrastructure (Section 7B)

Land cannot be reclaimed by any organ of state for the development of state infrastructure unless duly authorised by the Minister. An application process is prescribed that integrates with the Environmental Authorisation process of NEMA. The Minister must consult with any organs of state that may be affected by the decision, prior to giving authorisation. Both the Environmental Authorisation and the Minister's approval are required.

NEW: This new clause outlines the process to be followed in respect of reclamation for state infrastructure purposes.

Once reclaimed, the land becomes the property of the organ of state applying for the reclamation and may not be used for any other purpose except that originally applied for. Special conditions or title deed restrictions may be imposed by the Minister.

2.3 Reclamation of land for purposes other than state infrastructure (Section 7C)

NEW: This new clause outlines the process to be followed in respect of reclamation for purposes other than state infrastructure.

Only in exceptional circumstances will reclamation of land for purposes other than state infrastructure be considered. These circumstances must not contradict the purpose of coastal public property (as described in Section 7A). A motivation that shows how this core requirement is met is required as part of an application process which, amongst other aspects queries how the public will benefit and gain access to the reclaimed land.

An application process similar to the above is prescribed. The main difference is that the latter type can only be approved by the Minister with the ratification of Parliament and, once reclaimed, such land becomes Coastal Public Property which is subject to a lease with the Minister. All three levels of approval are required – i.e. the Environmental Authorisation, Minister’s approval and ratification from Parliament. The land may subsequently not be sold, subleased or used for another purpose without authorisation.

2.4 Designation of State-owned land as coastal public property (Section 8)

State-owned land can be designated to be coastal public property and its purposes through the publication of a notice in the *Gazette*, and may only be withdrawn from coastal public property in terms of section 8(3) with the prior approval of Parliament. Further detail of this process is provided in Figure 6.

NEW: Section 8 is abbreviated so as to remove the purposes of Coastal Public Property as these are captured in the new Section 7A.

Declaration of state-owned land as coastal public property	The reasons	<ul style="list-style-type: none"> · To improve public access to the seashore; · To protect sensitive natural ecosystems; · To secure the natural functioning of dynamic coastal processes; · To protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise; or · To facilitate the achievement of any of the objects of the Act.
	The process	<ul style="list-style-type: none"> · The Minister must consult with I&APs · Must obtain concurrence of the Minister or MEC responsible for managing State-owned land.
	Withdrawing a declaration	<ul style="list-style-type: none"> · The declaration may only be withdrawn by the Minister by notice in the <i>Gazette</i> with the prior approval of Parliament.
	Other conditions	<ul style="list-style-type: none"> · This section does not affect the application of the determination and adjustment of boundaries as set out in Section 26 of the Act.

Figure 6: Declaration of state-owned land as coastal public property

2.5 What about private land and coastal public property? (Section 9)

Privately owned land can be acquired by the State, through the Minister, acting with the concurrence of the Minister of Rural Development and Land Reform, either by purchase agreement, exchanging it for other land, or by expropriation (Box 2.1) if no agreement can be reached with the owner. The reasons for acquiring land using this section are limited to those given in Section 7A.

NEW: Section 10 can achieve the same objectives as section 8 and was therefore repealed.

Box 2.1: Expropriation Bill, Bill No. 6 of 2016

The intent is for the proposed expropriation to be in the public interest and allow government to achieve its commitment to land reform as well as to the reforms proposed to bring about equitable access to all South Africa's natural resources – including coastal and marine resources.

2.6 Access to coastal public property (section 13)

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 of the environment; 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. While no person may prevent access to 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 general national interest.

No access fee may be charged for access to coastal public property without the permission of the Minister.

The Minister may stipulate though, through a notice in the *Gazette*, maximum fees that may be charged for access to coastal public property or infrastructure, as payable by different groups of people, as a form of general approval for the charging of specific fees. Those wishing





to charge a higher fee would need to apply to the Minister to justify the need. Notwithstanding, separate commercial fees may be charged for the use of facilities or for activities that take place on or in coastal public property.

Before the imposition of a fee by the Minister, 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 for which a coastal use permit has been issued, or that forms part of a protected area or a port or harbour.

NEW: Section 13 prescribes the imposition of a maximum access fee by the Minister to streamline the application process and standardise access fees. Clarity is provided in respect to access fees and commercial fees for access to specific facilities and activities within CPP. The term 'Access fee' is now listed and defined.

2.7 The High-Water Mark (Section 14)

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 weather or sea conditions 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.

NEW: It is no longer necessary or permissible to substitute the HWM with a fixed straight-line boundary as coastal property owners would lose or gain land based on the movement of the HWM, and further to prevent unfair land grabs of the CPP. Textual improvements were made in terms of the definition of the HWM.

In light of this natural process, no person may replace the high-water mark curvilinear boundary with a straight line boundary in terms of section 34 of the Land Survey Act (Box 2.2).

Box 2.2: Summary of section 34 of the Land Survey Act:

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.

2.8 What happens when the HWM moves? (Section 14)

If the HWM moves

- **UP**, landward of a coastal property boundary, the owner of that coastal land bounded by the HWM loses ownership rights of any coastal land that falls below that mark, such that it becomes coastal public property. 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 remains coastal public property.

NEW: The clauses related to the movement of the HWM have been simplified, and now focus only on the HWM moving landwards. 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.

Landowners who lose ownership of land will not be entitled to compensation unless the change in position of the HWM was the result of an intentional or negligent act or omission by an organ of state, and it was a reasonably foreseeable outcome.

2.9 A response to erosion or accretion (Section 15)

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, **except in accordance with the ICM Act, NEMA or other SEMA**. 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.

NEW: Activities to modify CPP may be undertaken in accordance with NEMA and other SEMAs, in addition to the ICM Act

3. The coastal protection zone

3.1 Where is the coastal protection zone? (Section 16)

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 HMW (see section on HWM above) and extending inland for a default distance, either 100 m or 1000 m depending on circumstance, or in a manner that will include specific sensitive features, strategically located properties and flood prone areas.

NEW: As a consequence of climate change, the spatial extent of flood prone areas is increased. Rivers were previously omitted from the coastal zone and are now included. Flooding is detailed in respect to flooding from the sea and within the coastal zone, where the 1:100-year flood line is more appropriate.

There are, however, provisions in order to justify certain adjustments of this zone.

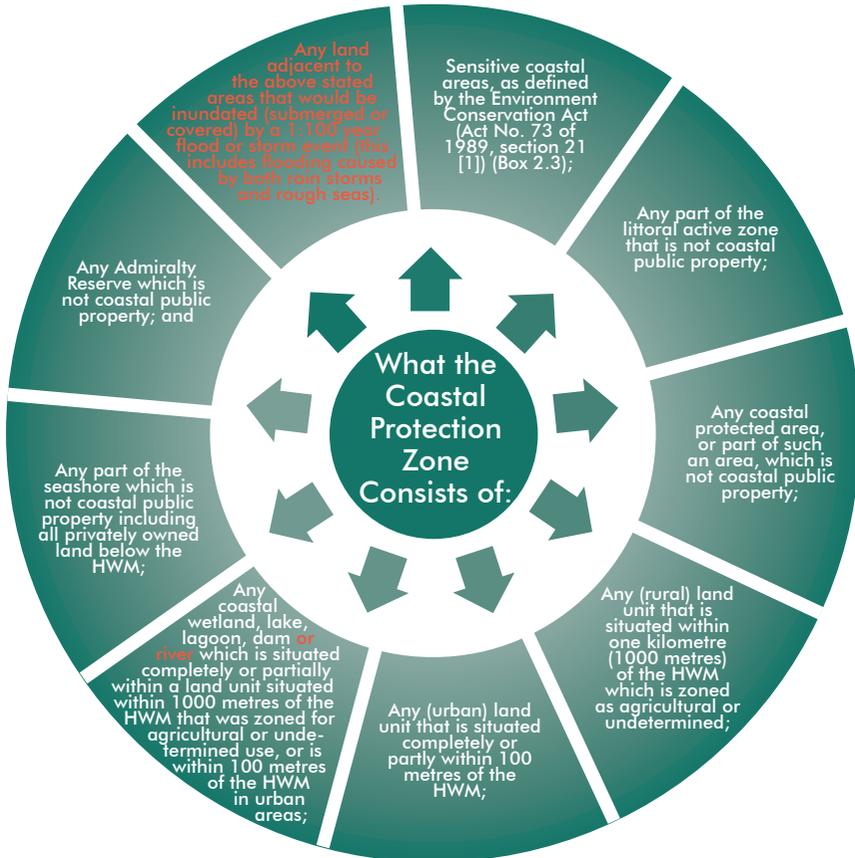


Figure 7: The Coastal Protection Zone

Box 2.3: Sensitive Coastal Areas in terms of Section 21 of the Environment Conservation Act

The same section of the Environment Conservation Act (Act No. 73 of 1989 which made provision for the first regulatory process involving Environmental Impact Assessments) was also used to designate 'sensitive coastal areas' where specific activities were to be regulated. Areas designated in this manner included the Outeniqua, Pennington and Umtamvuna Sensitive Coastal Areas.

3.2 What is the purpose of the coastal protection zone? (Section 17)

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, as a further measure of protection for coastal public property or people, properties and economic activities at risk from dynamic coastal processes.

More specifically, the coastal protection zone aims:

- To protect the ecological integrity, natural character, and the economic, social and aesthetic value of the coastal public property;
- To avoid increasing the effect or severity of natural hazards in the coastal zone;
- 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;
- To maintain the ecological integrity and productive capacity of the coastal zone; and
- To allow authorities to perform rescue and clean-up operations.

4. Coastal access land (Sections 18-20)

The intention of coastal access land is to ensure that the public can gain access to coastal public property via public servitudes. All municipalities with coastal public property were required to declare these servitudes within four years of the establishment of the ICM Act, and to report on their progress towards declaring coastal access land within two years of the ICM Act coming into effect.

NEW: The MEC, followed by the Minister are afforded the authority to intervene and designate coastal access land should a municipality fail to do so.

Certain provisions clarifying the nature of the public servitude are also amended.

Municipalities are required to establish coastal access land using by-laws and must make provisions for securing public access land in conditions of approval for rezoning, subdivision or development adjacent to or within coastal public property. Principles for the establishment of coastal access land, the processes for designation and withdrawal of coastal access land, as well as the responsibilities of local municipalities in this regard, are summarised in Figure 8.

COASTAL ACCESS LAND

1. 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 municipal zoning and planning schemes;
- Must be aligned with the provisions relating to coastal public property (i.e. Section 13);
- 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 within a port or harbour, defence or other strategic area without permission of the relevant Minister;
- **May not be compromised through rezoning, subdivision or development of adjacent land;** and
- Inappropriately situated coastal access land can be withdrawn.

2. What is the process required to designate or withdraw coastal access land?

The Municipality, MEC or Minister concerned must:

- By 2012, designate coastal access land through local by-laws (**this automatically assigns a public servitude to that land**);
- Assess the environmental impacts of the designation or withdrawal;
- Consult with interested and affected parties in terms of Section 53; and
- Give notice to the owner of the land regarding the intended designation or withdrawal of designation.

3. What are the municipal responsibilities with regard to coastal access land?

- Signposts at entrances to coastal access land;
- Control of use of and 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;
- Description of coastal access land in municipal coastal management programmes and in any spatial development framework;
- Perform any other actions that may be prescribed; and
- Report progress, to the MEC, on the measures to implement this section within two years of the ICM Act coming into force.

A Step-by-Step Guide for the Designation and Management of Coastal Access in South Africa has been developed by DEA and a flow diagram depicting practical lessons learnt is depicted in Figure 9. **Should a municipality fail to establish coastal access land, the MEC, and failing the MEC, the Minister, may designate such access land through consultation with the relevant municipality and MEC (Box 2.4).** Section 21 (j) of the Spatial Planning and Land Use Management Act, Act 16 of 2013 (SPLUMA) requires that the coastal access strips be included as part of the contents of a spatial development framework (SDF) where applicable.

Box 2.4: NOTE:

Not all scenarios of public coastal access are the same. In some areas open access exists with adequate infrastructure, while in some parts of the coast access may be restricted and controlled typically by private land owners, mining companies, private road etc. Another instance may be inaccessibility due to a difficult terrain and lack of infrastructure, typically in the rural coastal areas. Therefore, access should not be addressed by a blanket approach. Most cases are unique thus an area specific strategy consistent with the ICM Act is encouraged.

Step 1: Identify

- The access strip
- The Local Authority
- The Provincial Authority
- Affected land owners



Step 2: Investigate

- Title deeds if there are servitudes registered
- Historical access from aerial images
- Interview local population for insights on historical access
- If the road was deproclaimed (privatised by law), check conditions of road closure
- Conduct site visit and take pictures
- Look at signage used, is it appropriate?
- Location of property against "potential" public access strip



Step 4: Register servitude of public access

Upon agreement by all affected stakeholders on equitable and reasonable public coastal access proceed to:

- Appoint an independent land surveyor to survey and register the public coastal access land
- Servitude to be registered in the deeds and surveyor general's office respectively
- Land owners rights should not supersede public rights, need to strike a balance
- and to reflect on at least on the Municipal SDF and/or municipal development by-laws as public coastal access land



Step 3: Stakeholder engagement

- Education and awareness (ICM Act requirement on equitable and reasonable public access)
- Authorities and their mandates
- Land owners rights should not supersede public rights, need to strike a balance
- Agree on equitable and reasonable public access and the conditions of that access
- Expropriation is available if an agreement is not reached

Figure 9: Practical lessons learnt in the designation of coastal access land (Source: A Step-by-Step Guide for the Designation and Management of Coastal Access in South Africa, DEA 2014)



Figure 10: Image depicting surveyed access strips

5. 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 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.

6. Coastal protected areas (Section 22)

Protected areas are legislated and managed via the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003) (NEMPAA) (Box 2.5). With the promulgation of the ICM Act, all coastal protected areas automatically became part of the coastal protection zone.

Box 2.5: 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.

Protected Areas include:

- special nature reserves;
- national parks;
- marine protected areas;
- nature reserves; or
- protected environments.

The ICM Act, however, does allow the MEC to exclude, by notice in the *Gazette*, part of, or the entire coastal protected area from being part of the coastal protection zone. This may 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. **The Minister must assume the same authority as the MEC if the area to be excised is a national protected area, extends up to the South African state boundary, or straddles a provincial boundary or the South African state boundary.**

NEW: Under certain circumstances the Minister must exercise the power and function of the MEC

7. Special management areas (Section 23)

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 or restrict 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 interested and affected parties (I&APs) and then make the declaration by notice in the *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 special measures 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.

8. Establishment of Coastal Management Lines (Section 25)

The ICM Act makes provision for the establishment of coastal management lines (CML) with the intention 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 weather 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.

NEW: The term 'coastal set-back line' is changed to 'coastal management line' to prevent confusion with EIA development set-back lines. The MEC is given power to establish or change coastal management lines by way of a Gazette notice. Notices are simpler to amend than regulations.

Coastal management lines may be established for various reasons and there may be more than one management line in any given area. For example, one management line may be an anticipated erosion management line, while another may relate to aesthetics and control the height of buildings to protect a specific scenic landscape. The CML may even be situated wholly or partially outside the coastal zone. By themselves, CMLs do not affect development or activities, **but the MEC may publish specific regulations to prohibit or restrict the construction, extension or alteration of structures that are either wholly or partly seaward of the line(s).**

The establishment of CMLs is a provincial responsibility but the MEC can only declare or change such a management line after consultation with Municipalities and I&APs **whilst considering the location of immovable property and the ownership and zonation of vacant land.** In other words, I&APs may influence where this line should be drawn based on local infrastructure, conditions and knowledge.

The MEC must communicate the proposed CML by publishing a notice in the Gazette. Once the notice has been published, the local municipality of that area must delineate the coastal management line on the map or maps that form part of the municipal land use scheme. This is done so that the public may determine the position of the management line in relation to existing cadastral boundaries.

NEW: Under certain circumstances in the coastal protection zone, the Minister must exercise the power and function of the MEC

The Minister must assume the same authority as the MEC, after having consulted with the relevant MEC under special circumstances relating to the proposed location of a coastal management line, including the establishment of CMLs in areas that are proclaimed as a National Protected Area (as defined in NEMPAA), straddles the coastal boundary between two provinces and extends up to or straddles the border of the Republic.

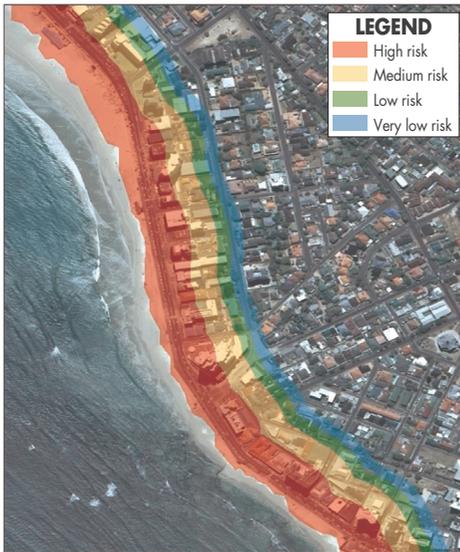


Figure 11: A spatial representation of potential risk informing CMLs

The establishment of CMLs seeks to minimise the human-environmental conflicts that occur on the coast by providing a means to control coastal development with the intention of avoiding the risks emanating from coastal processes that could impact on property, human life, social dynamics, economic opportunities etc. Furthermore, CMLs may also be established with the intention of preserving coastal spaces that have social importance such as heritage sites.

There are many factors that need to be considered when establishing CMLs, including other legislation such as the SPLUMA, the Disaster Management Act, 2002 (Act No. 57 of 2002) as well as provincial legislation and municipal by-laws. In addition, local social, economic, conservation, environmental and heritage aspects need to be considered specifically the resulting impact of the establishment of CMLs on communities.

A National Guideline towards the development of CMLs has been developed to provide guidance to Lead Agencies of Coastal Provinces for the establishment of CMLs (Box 2.6). An example of risk zones is shown in Figure 11. Four-time horizon-based risk zones respectively as red, orange, green and blue, are proposed.

Box 2.6: National Guideline Towards the Establishment of Coastal Management Lines

Section 25 of the ICM Act emphasizes the need for establishing Coastal Management Lines (CMLs), with the aim of protecting the coastal public property, coastal protection zone, people and infrastructure from the dynamics of the coastal processes in the interest of public safety, and preserving the aesthetic value of the coastal zone.

The coast is a dynamic zone and bears many hazards. In light of climate change it is predicted that the frequency and intensity of natural hazards such as storm surges will further increase, sea levels will rise, and erosion will be exacerbated beyond the increase observed in the past decades. CMLs are planning tools with the purpose of avoiding or minimizing negative impacts that emanate from natural processes that may have detrimental effects to the people and property, while also serving to protect the coast from human-induced threats to biodiversity and physical features and in so doing, preserve the coastal space. CMLs are thus multidimensional and can be applied to a number of coastal management aspects within the limitations of the ICM Act.

The relevant Member of the Executive Council (MEC) (and by association, the lead agencies responsible for coastal management) is responsible for establishing CMLs in Provinces. This document aims at providing guidance to the coastal provinces during the process of establishing Coastal Management Lines within their provincial jurisdictions. Given that each province is unique, this document provides the minimum considerations to be taken into account when establishing CMLs, by referring to potential data sources, appropriate data, data management, components of a situational analysis, spatial planning and stakeholders. However, it does not propose a technical methodology. The minimum considerations in terms of developing CMLs for estuaries are also provided.

The cross-cutting nature of CMLs requires that a range of stakeholders be consulted through this process. CMLs contribute to spatial planning and disaster risk management and as such, they may have an impact on land ownership and land uses along the coast. The CMLs fulfil the function of a planning tool in terms of the ICM Act and are best effected when incorporated into other broader planning processes such as Spatial Development Frameworks (SDFs) and Land Use Schemes etc., so as to ensure that integrated and harmonious development planning that takes all affected stakeholders into account.

In the context of 'risk', this document also aims to create a broad, basic understanding of disaster risk management and related concepts.

CHAPTER 3

BOUNDARIES OF COASTAL AREAS



CHAPTER 3 - BOUNDARIES OF COASTAL AREAS

Defining coastal boundaries is a difficult task faced by all countries that aim to develop and implement integrated coastal management. 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 (Sections 26 – 29)

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 Figure 12 below, the communication of the determination and adjustment of boundaries is by notification in the *Gazette*. 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.

Determination and Adjustment of Coastal Boundaries			
		Responsibility & adjustment	ICM Act section
▶▶▶	Coastal public property	▶▶▶ The Minister	▶▶▶ Section 27
▶▶▶	Coastal protection zone	▶▶▶ The MEC	▶▶▶ Section 28
▶▶▶	Special management areas	▶▶▶ The Minister	▶▶▶ Section 23
▶▶▶	Coastal access land	▶▶▶ The Municipality	▶▶▶ Section 29

Figure 12: Determination and adjustment of coastal boundaries



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 uncertainties or disputing claims over the position of a coastal boundary. Boundaries may also be determined or adjusted if doing so 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 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.

NEW: Under certain circumstances in the coastal protection zone, the Minister must exercise the power and function of the MEC

The Minister must assume the same authority as the MEC if the area to be excised is a national protected area, extends up to the South African state boundary, or straddles a provincial boundary or the South African state boundary.

NEW: The original provisions empowering the Minister to exclude areas from the Coastal Public Property is deleted to avoid unintended consequences that are in conflict with the principles of the ICM Act. Instead, more clarity relating to what constitutes Coastal Public Property is provided in the amended Section 7 of the ICM Act.

The new section 97A indicates that those exclusions granted prior to the commencement of the ICM Amendment Act (1 May 2015) are deemed of no force and effect, and that the land reverts to coastal public property.

The reclamation provision was previously inappropriately placed and also deemed inadequate. It has been replaced by insertion of Sections 7B and 7C into the ICM Act.

A more detailed description of the considerations and requirements for the determination and adjustment of the three main types of coastal boundaries (CPP, coastal protection zone and coastal access land) are illustrated below.

Coastal Public Property

The Minister must take into account:

- The dynamic nature of the shoreline;
- Periodic natural movements of the high water mark;
- Erosion and accretion of the seashore;
- Natural functioning of dynamic coastal processes;
- Inclusion of the littoral active zone, sensitive ecosystems and coastal wetlands;
- Potential effects of projected rises in sea-level;
- Any anthropogenic influences on dynamic coastal processes; and
- Any other factor that may be prescribed.



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 inland boundary of coastal public property by demarcating a continuous strip of land adjacent to it; and
- Any factor that may be prescribed.



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 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 protect coastal protected areas; and
- Importance of not unreasonably restricting land owners' rights



Figure 13: Considerations and requirements for the determination and adjustment of coastal public property, the coastal protection zone and 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 repair the damage or financially compensate the owner of the property.

3. Marking coastal boundaries on zoning maps (Section 31)

As with a coastal management 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. This notification must include a description of the land involved and include a diagram of the land involved which is signed by a land surveyor.

4. Endorsements by Registrar of Deeds (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.



CHAPTER 4

ESTUARIES



CHAPTER 4 - ESTUARIES

Estuaries are defined as a body of surface water that is permanently or periodically open to the sea; in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the body of surface water is open to the sea; or in respect of which the salinity is higher than fresh water as a result of the influence of the sea, and where there is a salinity gradient between the tidal reach and the mouth of the body of surface water. Estuaries are highly productive ecosystems, and provide a number of important ecological and socio-economic functions that yield significant benefits to people. They are, however, sensitive to human impacts, flow modification, pollution, habitat destruction, over-exploitation of living resources and climate change. This chapter details the proposed integrated and improved management of estuaries in South Africa by means of the National Estuarine Management Protocol as well as management plans for individual estuary.

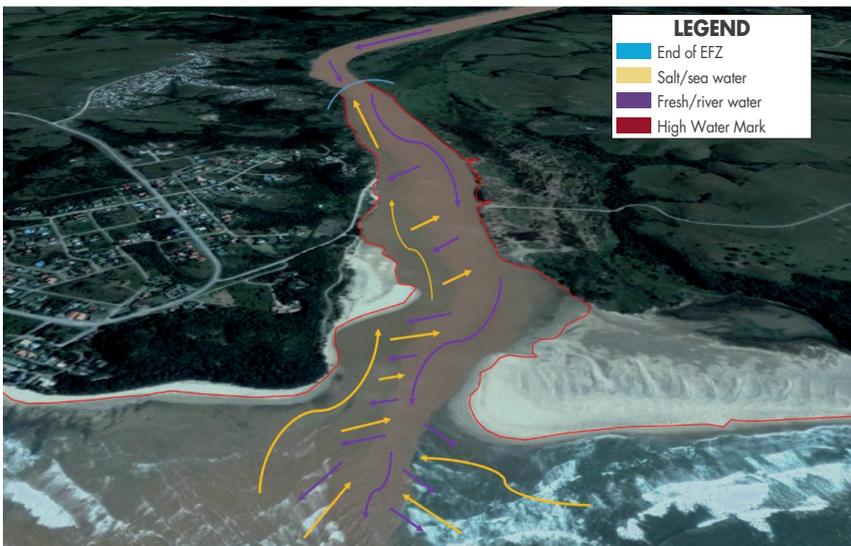


Figure 14: Graphic illustration of the definition of an estuary

1. National Estuarine Management Protocol (Section 33)

Estuaries in South Africa must be managed in a co-ordinated and efficient way, in accordance with the Protocol, which must be developed by the Minister in conjunction with the Minister responsible for Water Affairs and published by notice in the *Gazette*.

NEW: Section 33 amended to change terminology to reflect that the National Estuarine Management Protocol should be published in the Gazette by notice and not prescribed by regulations

The Protocol was published in 2013 (National Estuarine Management Protocol, Government Notice No 341 of 10 May 2013, published in Government Gazette No. 36432). A summary of the purpose of the Protocol is shown below.

What is the purpose of the National Estuarine Management Protocol?

- To determine a strategic vision and objectives for achieving effective integrated management of estuaries;
- To set standards and guidelines for estuary management;
- To establish procedures or provide guidance regarding how estuaries must be managed and how the management responsibilities are to be exercised by different organs of state and other parties;
- To establish minimum requirements for estuarine management plans,
- To identify who must prepare estuarine management plan and the process to be followed in doing so; and
- To specify a review process for estuarine management plans to ensure compliance to the ICM Act

Figure 15: A summary of the National Estuarine Management Protocol purpose

One of the most important contributions of the Protocol was to specify how the role of 'Responsible Management Authority' is to be determined for individual estuaries. This guidance is provided in Figure 16.

Development of Estuarine Management Plans		Responsibility
Within a single Local Municipality	Local Municipality	
The border between two Local Municipalities	District Municipality	
The border between two District Municipalities	Provincial lead agent	
The border between two Provinces	DEA	
The South African border	DEA	
Within a Protected Area	Protected Area Management Authority	
Within a Harbour Area	DEA	

Figure 16: Guidance on who develops EMPs.

2. Estuarine Management Plans (Section 34)

Estuarine Management Plans (EMPs) are to be developed by the entities identified in the Protocol, who then have the responsibility to:

- Publish the plan for public comment as determined in part 5 of Chapter 6 of the Act;
- **Coordinate the implementation of the EMP;**
- **Submit an annual development and implementation progress report to the Minister, which must also be tabled in Parliament annually; and**
- **If applicable, ensure that relevant legislation is enacted to implement the plans.**

NEW: Additional criteria for compiling a management plan, and monitoring and reporting on progress, respectively, have been inserted

The estuarine management plans must be consistent with, the Protocol, as well as the national, and applicable provincial and municipal coastal management programmes.

The “Guidelines for the Development and Implementation of Individual Estuarine Management Plans” document was developed in 2015 to supplement the Protocol in providing clear procedures and guidance to the responsible management authorities who must develop and coordinate the implementation of EMPs (Box 4.1). An estuarine management framework is provided, based on the minimum requirements stipulated in the Protocol, structured in term of the three main phases, namely the Scoping phase, Objective setting phase and the Implementation phase. A summary of the procedure for the development of EMPs is provided in Figure 17.

Box 4.1: Guidelines for the Development and Implementation of Individual Estuarine Management Plans

This document presents guidelines for the development and implementation of individual EMPs as required by the ICM Act and in accordance with the Protocol. The various phases are detailed as follows: The **Scoping Phase** comprises a situation assessment to reflect on the current status of estuarine management in a specific estuary, conducted in collaboration with other relevant lead authorities and interested and affected parties, including estuarine scientists.

The **Objective Setting Phase** entails the preparation of the Estuarine Management Plan, in accordance with the minimum requirements of the Protocol.

The **Implementation Phase** comprises the execution and monitoring of the estuarine management plan. During the implementation phase responsible departments (or sectors) are required to develop project plans for management priorities identified in the estuarine management plan, and to execute and monitor progress in accordance with monitoring plans. In the implementation on management plan an adaptive management approach (i.e. learning-by-doing) should be followed where new learning (e.g. gained through monitoring) is continuously used to improve implementation strategies and execution of projects, and ultimately to improve the estuarine management plan. A detailed review of an estuarine management plan needs to be conducted at least every five (5) years in accordance with the Protocol.

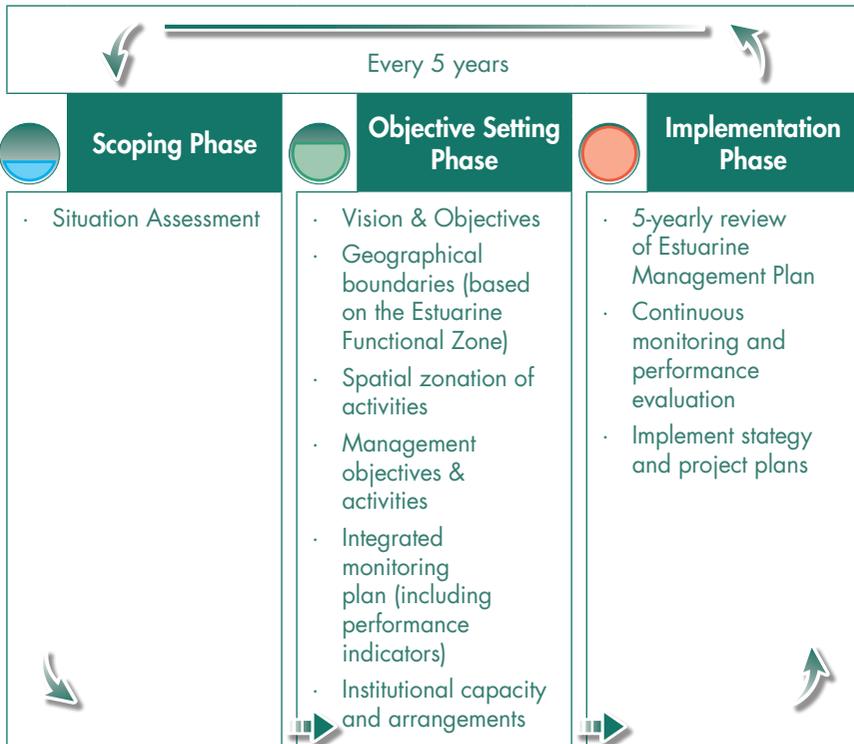


Figure 17: A summary procedure for the development of Estuarine Management Plans (Source: Guidelines for the development of Estuarine Management Plans (2015) Department of Environmental Affairs)

Box 4.2: What is the Estuarine Functional Zone?

The Estuarine Functional Zone (EFZ) encompasses the natural features of an estuary, including the supporting physical and biological processes and habitats necessary for estuarine health and function. It also provides for dynamic processes which characterise the estuarine environment, such as tidal fluctuations and backflooding. The EFZ is spatially delineated by the 5 m topographical contour and is considered a sensitive environment, and thus Environmental Authorisation is required before development within this zone may proceed (2014 EIA Regulations, Listing Notice 3 (GN 985). In the absence of detailed flood level data, such as the position of the 1:100 year flood line, the 5 m contour, ergo the EFZ, is the default high water mark (HWM) within estuaries (Source: Van Niekerk & Turpie, 2012)

CHAPTER 5 - 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. Cooperative 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 cooperative coastal governance in South Africa. These arrangements are made at national, provincial and municipal government levels, and the embodiment of cooperative 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 arrangements of proposed Coastal Committees are described below.

1. National Coastal Committee (Sections 35-37)

The National Coastal Committee (NCC), currently functioning as Working Group 8 (Box 5.1), is established by the Minister, and its powers determined by notice in the *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 NCC are detailed in Figure 18.

NEW: Sections relating to the NCC (S. 35-37) have been revised to streamline the provisions and create more flexibility with the appointment of representatives. Functions can now be performed by any existing forum, e.g. MINTEC working group. The NCC must report to the Minister on an annual basis. The Minister must elect a member of the Department as the NCC Chairperson.

Box 5.1: The Thematic Focus Of Working Group on OCEANS AND COASTS (WG O&C)

The role and proper functioning of the MINTECH WG 8 O&C on Oceans and Coasts (WG 8 O&C) is crucial to ensure proper implementation of the Integrated Coastal Management Act (Act No. 24 of 2008) (ICM Act), and other relevant legislation. The WG 8 O&C advises MINTECH, departments





and coastal stakeholders in order to better integrate, co-ordinate, facilitate and implement effective integrated oceans and coastal management in South Africa and in the region. Further, WG 8 O&C also advises on international bench-marking in this field, identify gaps, inconsistencies and opportunities; and proposes and/or develop strategies on how best to address or capitalize on these. Specifically, the WG 8 O&C focuses on service excellence in the delivery of oceans and coastal management governance services, including:

1. Promotion of integrated ocean and coastal management;
2. Development and implementation of policy and legislation;
3. Promotion of consistency and better integration at national, provincial and local levels;
4. Provisioning of technical advice on existing and new policies, legislation, programmes, plans and documents;
5. Working with other WG's to raise awareness and ensure that a comprehensive education and training framework is developed and implemented;
6. Developing and implementing a reporting and information management system;
7. Working with other WG's to ensure that systems and processes are developed and implemented for impact management, including customization of environmental impact assessments for oceans and coasts;
8. Working with other WG's to ensure a representative marine protected area network, and effective management arrangements for MPAs and estuaries
9. Working with other WG's to ensure compliance and enforcement with ocean and coastal instruments;
10. Working with other WG's to curtail ocean and coastal pollution and ensure coastal waters meet international standards; and
11. Working with other WG's to guide the development and implementation of Coastal management programmes in South Africa.

It should be stressed that all of the environmental management functions associated with these issues are dealt with, including: (i) information management and awareness-raising (monitoring, research and education, dissemination of information, external capacity development, etc.) (ii) policy making and planning (problem identification, diagnosis and prioritisation; environmental and economic development; goal setting and strategies; integration of environmental regulatory considerations into sector policies, etc.); (iii) the establishment and maintenance of the institutional framework (institutional set-up; legislation; implementation; delivery of environmental management services; application of various regulatory tools, etc.); and (iv) the mobilisation of resources (human, technological and financial).

With respect to the information management and awareness-raising functions, although this function is coordinated by Working Group III, WG 8 O&C should identify and inform possible information management and awareness-raising initiatives that should be taken up by Working Group III.

National Coastal Committee

Functions



- Promotion of integrated coastal management (ICM) and co-operative governance by co-ordinating of the implementation of ICM Act and national coastal management programme.
- Promotion of ICM within and between each sphere of government, and between organs of state and other parties.
- Promotion of integration of ICM concerns and objectives into:
 - Environmental Implementation and Management Plans referred to in NEMA Chapter 3;
 - National, provincial and municipal development policies, plans and strategies; and
 - Other plans, programmes and policies of organs of state whose activities may create adverse effects on the coastal environment.
- Performance of any other delegated function.
- Report to the Minister annually on the above matters, and such report must be tabled in Parliament.

Members/representatives

- Members are appointed by the Minister.
- Minister must designate an official from the Department as the Chairperson;
- Members must be able to assist in fulfilling functions of the national coastal committee.
- Permanent members must include:
 - One representative from each Provincial Coastal Committee.
 - Representatives from government departments who are involved with regulating or undertaking activities that potentially have an adverse effect on the coastal environment (e.g. agriculture, minerals and energy, transport, public works, water affairs and forestry, provincial and local government).
 - At least one representative from management authorities of coastal protected areas.
- The Committee may invite other persons to participate (e.g. other government departments, representatives of coastal municipalities or coastal experts); and
- The Minister may appoint an alternative or replacement members.

Vacation of office and termination of membership

- A Member of the National Coastal Committee vacates his/her office if the member tenders his/her resignation;
- The Minister may terminate membership of the National Coastal Committee if:
 - A member fails to perform his/her duties according to the ICM Act;
 - A member brings the committee into disrepute; or
 - Such termination is in the interests of the public.



Figure 18: Functions and composition of the National Coastal Committee

2. Designation and functions of provincial lead agency (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 was required 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.

NEW: Section 38 is amended to correct a cross-reference and to improve text

The Premier may assign any of the functions of the lead agency to any other organ of state. 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 (Box 5.2);
- Devising measures to monitor and enforce compliance with the ICM Act; and
- Performing any other functions assigned to it by the Minister or MEC.

Box 5.2: DEA Awareness, Education and Training Strategy

The four main goals of the Strategy are to:

- Provide guidance for effective awareness, education and training governance in South Africa;
- Ensure the long term sustainability and efficient operation of AET initiatives through appropriate resource allocation, information exchange and partnership arrangements;
- Facilitate closer communication and co-ordination among all responsible authorities and between government and other stakeholders for coastal awareness, education and training efforts in coastal areas; and
- Ensure the quality and relevance of the coastal AET initiatives over the long term through efficient administration that includes monitoring, evaluation and adaptation to changing circumstances.

The Strategy undertakes to support coordinated, relevant and targeted awareness, education and training for South Africa. The Strategy promotes the priorities of the Oceans and Coasts Branch within the DEA and supports the close collaboration with other core departments and agencies at all levels of government that have a role in or an impact on coastal governance and the effective implementation of the ICM Act. The Strategy also promotes the collaboration with individuals and organisations outside of government who are involved in or supportive of sustainable coastal development in South Africa.



3. Provincial Coastal Committees (Sections 39-41)

The MEC of each coastal province was obligated to 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 19.

Provincial Coastal Committee

Functions



- Promotion of integrated coastal management (ICM), as well as co-ordinated and effective implementation of ICM Act and the provincial coastal management programme.
- Advise the MEC, provincial lead agency and the national coastal committee on provincial coastal management matters.
- Advise the MEC on development, finalisation, review and amendment of the provincial coastal management programme.
- Provision of a forum for promotion of dialogue between key organs of state and other people involved in coastal management.
- Promotion of the integration of coastal management concerns and objectives into plans, programmes and policies of other organs of state whose activities may have adverse effects on coastal environment.
- Performance of any other delegated function.

Members/representatives

- Members are appointed by the MEC.
- Members must:
 - Be representative of organs of state and NGOs/bodies who have direct interests in the management and conservation of the coast;
 - Be able to assist in fulfilling the functions of the provincial coastal committee;
 - Have relevant expertise;
 - Represent coastal municipalities;
 - Represent community based or NGOs;
 - Represent scientific or coastal research institutes.
- MEC may/must:
 - Appoint an alternative or replacement member; and
 - Determine rate of remuneration (with concurrence of Finance MEC).
- The National Director-General may appoint a DEA official as non-voting member of the Provincial Coastal Committee.

Vacation of office and termination of membership

- Member of Provincial Coastal Committee **vacates** his/her office if:
 - He/she becomes impaired and cannot carry out his/her duties.
 - He/she no longer holds any office necessary for membership of the provincial coastal committee.
 - He/she tenders his/her resignation and a MEC accepts it.
- MEC may **terminate** membership of the Provincial Coastal Committee if:
 - A member fails to perform his/her duties according to ICM Act.
 - A member obstructs Provincial Coastal Committee in the performance of its duties.
 - A member brings the Provincial Coastal Committee into disrepute; or
 - Such termination is in the public interest.

Figure 19: Functions and composition of the Provincial Coastal Committee

4. Municipal Coastal Committees (Section 42)

Each district, metropolitan 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 20.

Municipal Coastal Committee	
Functions ↓	Composition ↓
<ul style="list-style-type: none"> · Promote ICM in the municipality; · Promote co-ordinated and effective implementation of ICM Act and municipal coastal management programme; · Advise the Municipal Manager, Municipal Council and Provincial Coastal Committee on coastal management matters in the municipality; · Advise the Municipality on development, finalisation, review and amendment of the municipal coastal management programme; · Provide a forum for dialogue, co-ordination and co-operation between key organs of state and other people involved in coastal management in the municipality; · Promote the integration of coastal management concerns into the IDP and SDF and any other municipal plans and policies that affect the coastal zone; and · Perform any delegated coastal governance function. 	<p>A Municipal Coastal Committee may include:</p> <ul style="list-style-type: none"> · People with relevant coastal management expertise; · Representatives from management authorities of coastal protected areas or special management areas in the municipality; and · Representatives of communities or organisations with a particular interest in contributing to effective coastal management such as: <ul style="list-style-type: none"> ◦ Port authorities; ◦ Organs of state; ◦ Coastal resource users (for livelihoods or business); ◦ Environmental interest groups; or ◦ Research organisations.

Figure 20: Proposed composition and functions of Municipal Coastal Committees

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. The MEC must, however, then also assign specific powers, duties and responsibilities to the officer. This is done through a letter of appointment, along with the issuing of a confirmatory identity card.

A voluntary coastal officer must exercise the powers and perform the duties assigned to him or her in a manner that conserves and protects coastal public property. Their identity cards must be produced at the request of the public when performing assigned powers.

CHAPTER 6

COASTAL MANAGEMENT



CHAPTER 6 - COASTAL MANAGEMENT

This chapter of the ICM Act introduces Coastal Management Programmes as tools 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)

1.1 Preparation and Adoption (Sections 44, 46 and 48)

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 21 below.



Coastal Management Programmes			
	National	Provincial	Municipal
Responsibility	Minister	MEC	Municipality
Inclusion in Other Statutory Plans		May form part of a: <ul style="list-style-type: none"> · Land development plan; or · Integrated development plan, programme or strategy 	May form part of the: <ul style="list-style-type: none"> · Integrated Development Plan; or · Spatial Development Framework
<ul style="list-style-type: none"> · Must be reviewed and amended every 5 years or as required · Public Participation Prior to Adoption <ul style="list-style-type: none"> ◦ Notify public of a 30-day window for written representation or objections · Public Participation Post Adoption <ul style="list-style-type: none"> ◦ Within 60 days of adoption give the public notice regarding adoption of the programme; and ◦ Provide copies and a summary of the programme at specified places. 			

Figure 21: Responsibilities and processes for the development of coastal management programmes

1.2 Content of the CMPs (Sections 45, 47 and 49)

The ICM Act requires that CMPs meet a number of requirements before formal acceptance of such programmes. These requirements are listed in Figure 22. It should be noted that additional requirements may be prescribed and CMPs will have to take these into account.

ALL CMPs	1. All programmes must be a policy directive on integrated coastal management that provides for a co-ordinated, 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 National Estuarine Management Protocol.	P	
			This programme must be consistent with the National and Provincial CMPs and the National Estuarine Management Protocol.	L	
	2. All programmes must contain, as appropriate, either a national, provincial or municipal vision for coastal management including the sustainable use of resources.	 	(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.	P	
	3. All programmes must contain, as appropriate, either a national, provincial or municipal objective for coastal management.	 	(i) Achieve the provincial and local coastal management objectives of the municipality; (ii) Address the high percentage of vacant plots and low occupancy levels of residential dwellings; (iii) Equitably designate zones for mixed-coast housing taking into account the needs of previously disadvantaged people; (iv) Address coastal erosion and accretion; and (v) Deal with the coastal access.	L	
	4. Priorities and strategies to achieve the national coastal management objectives.				
	5. All programmes must include performance indicators to measure progress with the achievement of relevant coastal management objectives				
N	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 CMP must implement national norms and standards	P + L	
	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 dependant 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 CMP must implement the framework for co-operative governance.	P + L	
	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.		<table border="1"> <tbody> <tr> <td>May include a programme of projected expenditure and investment by the provincial and municipal government in order to implement the CMPs.</td> <td>May also include: (i) Description of specific areas within the coastal zone that require special management and strategies; and (ii) Estuarine management plans.</td> </tr> </tbody> </table>	May include a programme of projected expenditure and investment by the provincial and municipal government in order to implement the CMPs.	May also include: (i) Description of specific areas within the coastal zone that require special management and strategies; and (ii) Estuarine management plans.
May include a programme of projected expenditure and investment by the provincial and municipal government in order to implement the CMPs.	May also include: (i) Description of specific areas within the coastal zone that require special management and strategies; and (ii) Estuarine management plans.				

Figure 22: Common Content requirements for the coastal management programmes (CMPs) of the three spheres of government, National, Provincial and Local

1.3 Municipal by-laws (Section 50)

Once a municipality adopts a CMP it may prepare by-laws to provide for the implementation, administration and enforcement of such a programme (Figure 23).



General Coastal	Coastal Access	Coastal Planning Schemes	Coastal Erosion and Accretion	Urban Infill and low Occupancies	Public Open Space Use	Recreation Activities	Temporary Structures
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Figure 23: Examples of the Types of by-laws Municipalities can adopt

2. Coordination and alignment of plans and CMPs (Sections 51 and 52)

Other management tools such as integrated development plans (IDPs) and any plans/ programmes prepared in terms of NEMA must be aligned with both the National CMP and Provincial CMPs in order to give effect to these programmes. By implication, there should not be conflict between CMPs and other statutory plans.

NEW: Section 51 is amended for textual improvement

To ensure consistency between 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 6.1). The ICM Act is firm on the resolution of conflict in favour of the overall objectives of the ICM Act (see section 6 of the ICM Act).

Box 6.1: 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.

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 Constitution of South Africa. The public consultation process generally includes three steps. Firstly, consultation with the appropriate government officials (generally the Minister, MEC or municipal official) whose areas of responsibility will be affected to obtain the necessary approval. Secondly, reasonably accessible publication or broadcasting of intent must be undertaken in order to capture the attention of the public. Finally, insert a notification in the *Gazette*. This notice must provide sufficient information, in order that the public can submit written representation or objection to proposed actions within a period of no less than 30 days (Figure 24). These comments are given due consideration in the necessary reporting and document compilation.

 Consult Minister, MEC or municipal officials	 Public Notification	 Gazetting
<ul style="list-style-type: none">· Consultation with relevant authorities for direction and approval in accordance with their mandate and exercising powers	<ul style="list-style-type: none">· Draw public attention to the proposed activity in the spirit of co-operative governance	<ul style="list-style-type: none">· Provide public with sufficient information of the proposed activity allow for a >30 days comment period

Figure 24: Minimum requirements for public participation

4. Review of Coastal Management Programmes (Sections 54 and 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 an 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 Figure 25.

Criteria for reviewing provincial and municipal CMPs	
In reviewing the Provincial CMP, the Minister must determine whether it:	In reviewing the Municipal CMP, the MEC must determine whether it:
<ul style="list-style-type: none"> Meets the requirements stipulated in <u>section 47</u> of the ICM Act; Is consistent with the national CMP; Adequately protects coastal public property; and Provides a suitable policy framework to allow for efficient and effective provincial coastal management. 	<ul style="list-style-type: none"> Meets the requirements stipulated in <u>section 49</u> of the ICM Act (summarised in Table 6.1. above); Is consistent with the national and relevant provincial CMPs; Adequately protects coastal public property; and Was prepared in such a way as to allow for sufficient consultation and public participation by interested and affected parties.

Figure 25: The criteria for reviewing provincial and municipal coastal management programmes (CMPs)

Should the Minister decide that a provincial CMP does not comply with the criteria specified, 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 the Provincial Coastal Committee (see Section 39 of ICM Act and Figure 19 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 specified, 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 (Sections 56 and 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 *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.

NEW: Section 56 is amended for textual improvement

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

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 mandates and responsibilities for consultation are detailed in Table 4 below.

In all cases, the establishment of a coastal planning scheme must have the consent of:

- the Minister:
 - If the scheme extends beyond 500 meters into the sea; or
 - Affects the protection or use of marine living resources.
- The relevant Minister responsible for the navigation of vessels at sea or vessels entering or leaving a harbour if the scheme affects or restricts such vessels.

Table 4: Responsibilities with regards to the establishment of coastal planning schemes

Who?	Where?	In/after consultation with...
<p>The Minister</p>	<ul style="list-style-type: none"> · Coastal public property. · To protect and control the use of marine living resources or implement national norms and standards; · An area that straddles (is on both sides of) a coastal boundary between two provinces; or · An area that extends up to, or straddles the borders of South Africa. 	<ul style="list-style-type: none"> · The MEC; and · Any authority responsible for managing an area to which the scheme relates.
<p>The manager of a coastal protected area</p>	<p>The area within the protected area.</p>	
<p>The MEC</p>	<ul style="list-style-type: none"> · Areas not referred to in row 1 and 2 above; or · An area of the coastal zone within the province. 	<ul style="list-style-type: none"> · The Minister; and · Any authority responsible for managing an area to which the scheme relates.
<p>The Municipality</p>	<ul style="list-style-type: none"> · Areas not in referred to in row 1 and 2 above; or · An area of the coastal zone within its municipal jurisdiction. 	<ul style="list-style-type: none"> · The MEC (<i>note that the ICM Act refers to “in consultation with MEC and not after consultation”</i>); and · Any management authority responsible for that area
<p>The management authority of a special management area</p>	<p>Only within the special management area.</p>	<ul style="list-style-type: none"> · The MEC (<i>note that the ICM Act refers to “in consultation with MEC and not after consultation”</i>); and · Municipality, if the coastal planning scheme only applies in that management area.

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.



Figure 26: Hierarchy of coastal planning schemes

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.

CHAPTER 7

PROTECTION OF COASTAL ENVIRONMENT



CHAPTER 7 - 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; use of coastal public property; and finally, general provisions.

1. Assessing, avoiding and minimising adverse effects

1.1 Duty to avoid causing adverse effects on the coastal environment (Section 58)

This section interprets the duty of care and the remediation of environmental damage principle, which includes the duty to avoid adverse effects on the coastal environment. To achieve this, the ICM Act allows for a reading of Section 28 of the NEMA that specifically includes, or makes reference to 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, and to replace reference to "environmental management plan" with "coastal management programme".

If the Minister therefore 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 *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 person identified in section 28(1) or (2) 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 producing or discharging (releasing) a substance causing or which may cause a negative effect.



1.2 Coastal protection notice and coastal access notice (Section 59)

NEW: Power of the MEC in terms of issuing coastal protection notices was previously erroneously omitted. Section 59(3) was deleted due to conflict with Section 91 relating to delegation. Typographical errors were corrected.

If the Minister or MEC has reason to believe that anyone, has, either prior to or after the commencement of the ICM Act, carried out, is carrying out, or intends to carry out, an activity that has, or 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:
 - Take steps to protect the environment;
 - 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
 - Stop or postpone (delay) the activity to allow the potential impact to be studied.

Further details of coastal protection notices are illustrated in Figure 27.

Coastal Protection and Coastal Access Notices

Issued when:

The Minister or MEC has reason to believe that anyone is carrying out or intends to carry out an activity that has or will have a negative effect on the coastal zone, or the right to gain coastal access to, use and enjoy coastal public property. This power to issue these notices may be delegated in terms of section 89(1).

Notices must state:

- Clear reasons for the notice;
- Time period required to comply with the notice; and
- Details of the appeal process.

Procedure before issuing notices:

- Consult with organ of state that authorises/ authorised the activity; and
- Give person receiving notice reasonable opportunity to make representations.

Possible Instructions for Coastal Protection Notices

Possible Instructions for Coastal Access Notices

- Build, maintain or demolish any works specified;
- Close off access to coastal public property at a certain place;
- Plant, preserve or stop damaging indigenous vegetation at a certain place;
- Stop altering geographical features of the land at a certain place;
- Build or maintain structures to protect land from wind erosion;
- Rehabilitate land at a certain place;
- Remove stock from land; or
- Take measures to protect indigenous fauna.

- Prohibition of the activity in question (if not already prohibited by the ICM Act); or
- Directive to take appropriate steps in terms of the ICM Act or any other legislation to allow people access to coastal public property.

Figure 27: Contents, procedures and instructions for coastal protection and coastal access notices



1.3 Repair or Removal of Structures within the coastal zone (Section 60)

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, if it has been erected, constructed or upgraded unlawfully, or if it is having or is likely to have a negative effect due to abandonment.

NEW: The repetition of powers of the MEC in terms of issuing a repair or removal notices was deleted. Typographical errors were corrected.

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 *Gazette* (once), in a local newspaper (once a week, for two consecutive weeks) as well as by placing a notice on the structure itself during the period of advertisement.

Further details of a repair or removal notice are highlighted in Figure 28.

Repair or Removal of Structures

Structure has Adverse Impact Because:

- It is inappropriately located;
- It is in a state of disrepair (poor condition);
- It is abandoned; or
- Construction/upgrade contravenes the ICM Act or other law.

Notices must state:

- Clear reasons for the notice;
- Time period required to comply with the notice; and
- Details of the appeal process.

Procedure before issuing notices:

- Consult with organ of state that authorises/ authorised the activity; and
- Give person receiving notice reasonable opportunity to make representations.

Possible Instructions for repair or removal Notices

- Remove the structure from the coastal zone within a certain time period;
- Rehabilitate the site to a natural state;
- Repair the building/structure to the satisfaction of the Minister/MEC within a certain time period; or
- Take any other appropriate steps in terms of the ICM Act or other laws.

Figure 28: Repair or removal of structures notice

1.4 Failure to comply with certain notices (Section 61)

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. Implementation of land-use legislation in the coastal protection zone (Section 62)

Section 62(1) of the ICM Act states “An organ of state that is responsible for implementing national, provincial or municipal legislation that regulates the planning or development of land, must in a manner that conforms to the principles



of co-operative governance contained on Chapter 3 of the Constitution, apply that legislation in relation to land in the coastal protection zone in a way that gives effects to the purpose for which the protection zone is established as set out in section 17....”¹ This refers to the principles outlined in Chapter 3 of the Constitution (Box 7.1).

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.

NEW: Section 62(2) was deemed unnecessary as NEMA EIA Regulations already cover activities which may adversely affect the coastal environment, and was thus deleted.

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 (Section 17 of the ICM Act).

3. Environmental authorisations for coastal activities (Section 63)

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, as informed by EIAs, prior to undertaking certain listed activities. Environmental authorisations are issued by competent authorities designated in the NEMA EIA regulations, which providing for the procedures and requirements for environmental authorisations (Box 7.2).

1 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.

Box 7.2: Schedule of possible competent authorities:

- Department responsible for Environmental Affairs (mainly applications by national departments or organs of state, large EIAs and EIAs in national protected areas);
- Department of Mineral Resources (mining decisions);
- Provincial departments dealing with environmental issues (most EIAs); 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.

NEW: The criteria of Section 63 have given rise to interpretational difficulties for competent authorities, and are streamlined to incorporate all criteria into the general criteria to be taken into account when considering EIA applications. Subsections (2)-(4) are deleted.



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, coastal management lines and coastal management objectives;
- The socio-economic impact if that activity or action is authorised or not authorised;
- 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;
- Whether the development of activity; and
- The objectives of the ICM Act which apply to the activity.

Under what circumstances may the competent authority NOT issue an environmental authorisation? If the proposed 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.

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

- **NEW: Section 64 was deleted to remove the overriding power of the Minister over a competent authority to issue environmental authorisation in certain circumstances as this created confusion.**
- If the proposed activity or development cannot be located anywhere else and requires it to be located within coastal public property, the coastal zone or coastal access land; and
- If the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area.

Figure 29: Three key questions that must guide the issuing of environmental authorisations

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 *Gazette*.

NEW: Section 64 was deleted to remove the overriding power of the Minister over a competent authority to issue environmental authorisation in certain circumstances as this created confusion.

4. Use of Coastal Public Property

4.1 Coastal use permits on coastal public property (Sections 65 and 66)

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 an aquaculture facility, pipeline or cable servitude. The Minister may, by notice in the *Gazette*, list activities that are prohibited within coastal public property or otherwise require a coastal use permit from the Minister, and set different user charges for permit-requiring activities, provided that such activities do not require environmental authorization in terms of the NEMA.

No person may undertake a prohibited activity as listed by the Minister, without the required coastal use permit or in contravention of any conditions determined in the permit and the default terms of leases and coastal permits specified in Section 66 of the ICM Act.

A coastal use permit may be awarded by the Minister after application from any person for such a permit lodged in the prescribed manner, or through a prescribed process. If a coastal use permit is awarded, the holder thereof is still obliged to obtain any other coastal authorisations that may be required in terms of the ICM Act or any other authorisation in terms of other legislation, and comply with any other legislation.

NEW: Coastal leases and concessions are replaced by coastal use permits. The Minister is authorised to list activities which require a permit thereby removing the blanket requirement that all activities on CPP require a lease. Thus only impacting activities which are not appropriately addressed by NEMA EIA Regulations are regulated.

In some cases, lawful coastal leases or concessions in terms of the Sea-shore Act, 1935 (Act No. 21 of 1935) existed before the ICM Act came into effect. Lease or rights holders since 8 December 2015 need to ensure that their leases or rights



remain valid, or reapply for the necessary consents in terms of section 95 of the ICM Act. Additional detail is provided in Chapter 12.

A coastal use permit may not be awarded for a period longer than 20 years, whereafter a new application must be made, and is subject to any conditions in the *Gazette* or determined by the Minister. The coastal use permit must also be subject to a user charge as determined by the Minister.

4.2 Leases in admiralty reserves (Section 66A)

A lease in an admiralty reserve, prior to the commencement of this section, must be managed by the organ of state empowered to do so in terms of the relevant local, provincial or national legislation. Such leases must be managed as prescribed by the Minister and until so prescribed, must be managed to fulfil the purposes of coastal public property. Section 95 of the ICM Act, the application of which commenced on 8 December 2015, specifies that any holder of a lease on admiralty reserve land has to supply the Minister with a copy of the lease by 7 December 2017.

NEW: Section 66A was added to provide clarity on how existing leases on admiralty reserves, which forms part of CPP, should be addressed.

5. General Provisions

5.1 Temporary occupation of land within the coastal zone (Section 67)

Subject to the conditions of the Expropriation Act, 1975 (Act No. 63 of 1975) (Box 7.3), the Minister is allowed to direct that land within the coastal zone may be temporarily occupied for:

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

Box 7.3: 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.

The activities that may be undertaken on temporarily occupy land includes:

- Removing sand, stone, gravel, earth or other material;
- Depositing of materials; or
- Building and using temporary works including roads

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.

5.2 Amendment, revocation, suspension or cancellation of authorisations (Section 68)

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

- Where it is in the interests of the promotion, protection or sustainable utilisation of the coastal zone;
- Non-compliance with the conditions of the coastal authorisation;
- Conflict with a CMP or coastal management objective;
- Changes in circumstances that require an amendment, revocation, suspension or cancellation; or
- Changes that are necessary to meet South Africa's international obligations.

NEW: Consequential amendments were made to Section 68 based on the amended definition of 'authorisation' to 'coastal authorisation'

Before an authority amends, revokes, suspends or cancels a coastal authorisation the issuing authority must send a written notice to the holder of the coastal authorisation informing him of the planned amendment, revocation, suspension or cancellation. The holder may then make written representations within 30 days from the day the notice was issued. This written representation is an opportunity for the coastal authorisation holder to state the case for not revoking, suspending, cancelling or amending the terms of the coastal authorisation (Box 7.4). The Minister or issuing authority will then consider the matter and make a decision.

Box 7.4: Decisions which may be taken concerning coastal authorisations:

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

If the Minister or issuing authority has reason to believe that it is urgently necessary to act in order to protect the coastal environment or human health an immediate decision may be taken to suspend a coastal authorisation by notice while the above consultation process is followed.

CHAPTER 8

MARINE AND COASTAL POLLUTION CONTROL



CHAPTER 8 - MARINE AND COASTAL POLLUTION CONTROL

Both the coastal ecosystem and human health are 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 discharge 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 (Box 8.1) on land into coastal waters without either a coastal waters discharge permit or a general discharge authorisation. The Minister may however issue a general discharge 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 30). Such a general discharge 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 *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. rain runoff from residential, agricultural and mining.

If the operator intending to discharge effluent into coastal waters does not meet the criteria for general discharge authorisation, the operator must apply to the Department responsible for environmental affairs for a coastal waters discharge permit:

- By 2010, if the discharge is in terms of an existing licence or authorisation issued under the National Water Act (Act No. 36 of 1998);
- 2011, 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 36 of 1998); or
- As required if it is a new proposed discharge.

NEW: Consequential amendments were made to Section 69 based on the amended definition of 'general authorisation' to 'general discharge authorisation'.

Both the general discharge 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 continue with lawful discharge of effluent from land-based sources into coastal waters (unless otherwise informed) if application for a coastal waters discharge permit was made within the prescribed time periods and a decision remains pending.

Conditions for the granting or refusal of coastal waters discharge permits by the Minister are described in Figure 30.

Coastal Waters Discharge Permits

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 and 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) (Box 8.2); and
- Any factors that may be prescribed.

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.

Coastal Waters Discharge Permits

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 30: Granting of Coastal Waters Discharge Permits

Box 8.2: Section 27 of the National Water Act (Act 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.

Within five years of the commencement of the ICM Act (i.e. by 2013) the Director-General of DEA was to (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.

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).

NEW: Section 69 (11) relating to reporting on pipelines was deleted as it is now covered under Section 93.

2. Prohibition of incineration or dumping at sea (Sections 70 - 72)

The ICM Act is clear on its intent to prohibit incineration at sea and minimise dumping at sea. The ICM Act nevertheless does allow for dumping permits in certain circumstances 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 5 and the figures below.

Table 5: Prohibition of incineration or dumping at sea

Prescriptions	Detail
Incineration at sea:	No waste of any kind or any other material may be incinerated at sea, including aboard a South African vessel, aircraft, platform or other structure.
Importation of waste:	Waste may not be imported to be incinerated or dumped at sea including aboard a South African vessel, aircraft, platform or other structure.
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:	No waste or other material may be dumped at sea, including from a South African vessel aircraft, platform or other structure, without a dumping permit.

Prescriptions	Detail
Dumping at sea in another state:	No waste or other material may be dumped from a South African vessel, aircraft, platform or other structure at sea, in an area under the jurisdiction of another state without the written permission of that state.

As pointed out above, dumping or incineration at sea is allowed under certain circumstances via a dumping permit, and in emergency situations in which human life is threatened or the vessel, **aircraft, platform or other structure** is at risk. Dumping or incineration under emergency conditions must be reported to the Department of Environmental Affairs without delay.

NEW: Consequential amendments were made to Section 70 based on the amended definition of ‘coastal waters’ to extend to the EEZ and continental shelf.

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. Under emergency situations, or in cases where no other feasible solution is evident, the Minister may deviate from the prohibitions outlined in Table 5. 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 five years.** Thereafter a new application will have to be submitted. Figure 31 below provides more details on the factors influencing the outcome of dumping permit applications.

NEW: Clarity was provided regarding the time period for validity of a dumping permit. The Minister now has the power to prescribe in regulations, additional waste material that may be permitted and new waste categories in line with international changes.

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.

Box 8.3: National Action List

A National Action List for the Screening of Dredged Material Proposed for Marine Disposal was published on the 24th of August 2012 and is comprised of sediment quality guidelines. Decision making criteria will be developed in due course.

Dumping Permits

Considerations:

- The Waste Assessment Guidelines (Schedule 2 of the ICM Act);
- Any CMP that applies to the area;
- Potential environmental impact of the proposed dumping;
- National waste management legislation;
- The interests of the whole community;
- Transboundary impacts and international obligations & standards; and
- Any other factors that might be prescribed.

Types of material that MAY be considered for dumping:

- Dredged Material;
- Sewage Sludge;
- Fish processing waste from an industrial operation;
- Vessels and platforms or other man-made structures at sea (boats, jetties, etc.);
- Inert, inorganic geological material (that will not react in the sea);
- Natural organic material;
- Bulky items made mostly from steel, concrete and other non-harmful materials which cause physical rather than pollution impacts, in cases where no reasonable alternatives exist; or
- Waste or other material that may be prescribed.

Dumping Permits

Conditions under which material MAY NOT be dumped:

- Where materials have levels of radioactivity greater than those defined by the International Atomic Energy Agency;
- Where dumping could result in floating debris (rubbish);
- Where dumping could contribute to pollution of the marine environment;
- Where dumping could cause irreversible or long-lasting adverse effects that cannot be properly mitigated;
- Where dumping could cause a serious obstacle to fishing or navigation;
- Where dumping could negatively affect the achievement of any coastal management objective in any CMP;
- Where dumping would be contrary to any of South Africa's obligations under international law; or
- Where dumping would be contrary to the interests of the whole community.

Validity period:

- Permit validity may not exceed 5 years

Figure 31: Details in respect to dumping permits

CHAPTER 9

APPEALS



CHAPTER 9 - APPEALS

Chapter 9 gives details of the process of appealing against the issuing or refusal of coastal authorisations, coastal access notices, coastal protection notices, or repair and removal notices. These are expounded on in Regulations promulgated in July 2016 (Government Notice No.R.815 of 8 July 2016, GG No. 40128) (Box 9.1).

1. Appeals (Sections 74, 75 and 77)

The ICM Act allows for appeals to be lodged against notices served or any coastal authorisations in terms of the ICM Act. Figure 32 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 NEMA) must follow the same appeal process described in NEMA.

Box 9.1 - Appeal Regulations

Appeal Regulations were gazetted on 8 July 2016 pertaining to the process to be followed on the processing and consideration of, and decisions on appeals. This includes lodging of an appeal, responding statements, processing appeals, appeal decisions and detail on the proposed Advisory Appeal Panel.

If issued with:	If the applicant is dissatisfied with a decision taken to:	An appeal must:
<ul style="list-style-type: none"> · A coastal protection notice; · A coastal access notice or; · A repair and removal notice. 	<ul style="list-style-type: none"> · Issue; · Refuse; · Amend; · Suspend; or · Cancel a coastal authorisation.	<ul style="list-style-type: none"> · Be lodged within 30 days of the appellant being notified; · Be lodged within 60 days of the decision being made if the appellant is not notified;
The applicant must appeal to the Minister, if:	The applicant must appeal to the Minister if:	<ul style="list-style-type: none"> · Clearly state the grounds for the appeal;
The notice was issued by an MEC or a person delegated with the power to do so by the Minister.	The decision was taken by person delegated power to do so by the Minister in terms of the ICM Act.	<ul style="list-style-type: none"> · Briefly state the facts that the appellant is relying on and specifically include any new information not previously supplied to the person who made the original decision and the appeal panel should consider;
The applicant must appeal to the MEC, if:	The applicant must appeal to the MEC if:	<ul style="list-style-type: none"> · Comply with any other requirements of the appeal process; and
The notice was issued by a municipality or a person delegated with the power to do so by the MEC.	<ul style="list-style-type: none"> · The decision was made by a person exercising powers delegated by the MEC; or · The decision was made by a provincial organ of state; or · A municipality. 	<ul style="list-style-type: none"> · Follow the NEMA appeal process if an appeal is lodged relating to an environmental authorisation in terms of section 63 of the ICM Act.

Figure 32: Content of appeals and procedure to be followed when appealing in terms of the ICM

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 in an advisory capacity by the Minister or MEC (Figure 33). The final decision, however, rests with the Minister or the MEC, as the case may be.

The Advisory Appeal Panel:	When deciding the merits of an appeal, the panel must consider:
<ul style="list-style-type: none"> · Must give the appellant, decision-maker or issuer of the notice and I&APs a chance to make written or oral submissions; · Must act fairly; · May determine its own procedures; · May organise hearings and make orders if they refer to preliminary and procedural matters; · May call for witnesses and examine them under oath; and · Must provide the Minister or MEC with a written report of its findings and recommendations. 	<ul style="list-style-type: none"> · The objectives of the ICM Act; · Any relevant coastal management objectives or standards and relevant policies; and · Guidelines published or endorsed by the Department or the provincial agency concerned.

Figure 33: Requirements and proceedings of the Advisory Appeal Panel

Figure 34 below describes the requirements for, and disqualifying criteria of the Advisory Appeal Panel which may advise the Minister or MEC when making their decision.

What are the requirements for selection of members to serve on the Advisory Appeal Panel?

- A suitable qualification;
- Relevant experience relating to the contents of the appeal; and
- Commitment to the objectives of the ICM Act

When may a person NOT be a member of the Advisory Appeal Panel?

If:

- That person was in any way involved in making the decision being appealed against (i.e. there is a conflict of interest);
- Any spouse or close family member of that person has a personal or private interest in the appeal;
- They are an un-rehabilitated insolvent;
- They have been removed from office due to improper conduct; or
- They have been declared mentally ill or disordered by a court of law.

Figure 34: Conditions and requirements for membership of the ICM Act Advisory Appeal Panel

This panel must consist of an uneven number of individuals. 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 an 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 35.

Possible reasons for procedures and powers of interim orders	
<p>Possible reasons for making interim orders: ➡</p>	<ul style="list-style-type: none"> · If the Minister or MEC feels it is necessary to achieve the objectives of the ICM Act; or · There is an application for an interim order by the advisory appeal panel or a person involved in the matter.
<p>If the Minister or MEC receives an application for an interim order: ➡</p>	<ul style="list-style-type: none"> · He or she must allow the parties involved to make oral or written submissions; but: · If the coastal environment is at risk, an interim order may be issued before the above representations are made.
<p>An interim order may: ➡</p>	<ul style="list-style-type: none"> · Preserve existing rights or relationships between the parties to the proceedings; · Allow for interim protection of the coastal environment; · Suspend or temporarily postpone a notice or any part of it; or · Deal with procedural issues.

Figure 35: Possible reasons for procedures and powers of interim orders

3. Determination of appeal by the Minister or MEC (Section 78)

As specified in Section 74 of the ICM Act, the authority to decide the outcome of the appeal rests either with the Minister or MEC. Figure 36 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.



What are the possible outcomes of an appeal?

- Dismissal of the appeal and confirmation of the decision appealed against;
- Upholding part, or all, of the appeal, and amendment or revocation of the decision appealed against and replacement with a new decision; or
- Referral of the appeal back to the Advisory Appeal Panel to review certain issues and submit a revised report to the Minister or MEC.

What must the Minister or MEC take into account when deciding the outcome of an appeal?

- The objectives of the ICM Act;
- Any relevant coastal management objectives; or
- The findings and recommendations of the appeal panel. It is important to note that the Minister or MEC is not bound by such findings and recommendations as the panel acts in an advisory capacity.

Figure 36: Possible outcomes and matters to be considered by the Minister or MEC with regard to an appeal lodged in terms of the ICM Act



CHAPTER 10

ENFORCEMENT



CHAPTER 10 – ENFORCEMENT

This chapter deals with the definition of certain offences as well as detailing the penalties that are associated with the two categories of offences. Chapter 10 also deals with the powers of the Minister or the MEC to initiate legal processes against offenders. DEA developed an Enforcement Manual in 2011 to guide officials in the enforcement of the Act (Box 10.1)

Box 10.1: Enforcement Manual for the ICM Act

The purpose of this Manual is therefore to ensure that the coastal zone is protected, and in this particular context, through the use of the enforcement tools provided for in NEMA and the ICM Act. These tools include administrative directives and notices, criminal enforcement and civil enforcement tools. The ultimate goal is therefore protecting the right entrenched in section 24 of the Constitution, thereby ensuring a healthy and sustainable coastal environment for all, including future generations.

The Manual incorporates, and where necessary, expands on previous standard operating procedures (“SOPs”) for the Environmental Management Inspectorate. The purpose of such SOPs is to prescribe conduct that all officials must adhere to, to ensure that functions are performed uniformly and effectively. Various SOPs are included: general procedures, monitoring and compliance procedures, and enforcement procedures. The goal of these is to ensure effectiveness and success in enforcing the Act. A new SOP on the enforcement of Chapter 8 of the ICM Act, dealing with marine and coastal pollution control, was added.

This Manual also contains guidelines for taking the correct enforcement action in any particular circumstances. While not as prescriptive as the SOPs, they are by no means less specific. Illegal conduct or conduct leading to significant environmental harm, pollution or degradation of the coastal zone, must carry consequences. The regulated community must know that they are being monitored and that certain conduct will trigger certain reactions from the officials tasked with the enforcement of the Act, including the Environmental Management Inspectors (EMIs).

The monitoring and compliance procedures as well as the enforcement procedures will ensure that when action is taken, the desired result will be achieved in the correct manner, leading to scientifically accurate, procedurally correct and legally defensible results. Although the SOPs are binding, they allow for a healthy discretion, and in many cases, also contain useful hints and tips. They do not replace, but rather supplement EMIs and other training material. The drafting of this Manual also coincided with the update of both the EMI training material and the guide to the prosecution of environmental crime.

1. Offences and penalties in terms of the ICM Act (Sections 79 and 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 6 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 offence for the second or subsequent time may be sentenced as if they had committed a category one offence, and be penalised accordingly.

Table 6: Offences and penalties that may be issued under the ICM Act

Offence Category	Offence	ICM Act Section Contravened	Penalty
1	· Discharging effluent from land into coastal waters;	69	<ul style="list-style-type: none"> · Up to R5 million fine; or · Up to 10 years in prison; or · Both.
	· Incinerating waste or other material at sea;	70	
	· Loading, importing or exporting waste to be incinerated at sea;	70	
	· Dumping any waste or other material at sea without a permit;	70	
	· Altering any authorisation;	63, 65, 69, 71	
	· Fabricating or forging an authorisation;	63, 65, 69, 71	
	· Passing off, using, altering or possessing any false documentation or coastal authorisation;	63, 65, 69, 71	
	· Making a false statement or report to get authorisation or when objecting to an authorisation;	63, 65, 69, 71	
	· Reclaiming land from coastal waters without authorisation of the minister;	7B and 7C, 63	
	· Utilising reclaimed land illegally;	7B and 7C, 63	

Offence Category	Offence	ICM Act Section Contravened	Penalty
1	· Charging fees illegally;	13 (3) (a), (b)	<ul style="list-style-type: none"> · Up to R5 million fine; or · Up to 10 years in prison; or · Both.
	· Conducting a prohibited activity in terms of section 65(1) (a);	65 (2)	
	· Failure to comply with a verbal directive issued by the Minister or MEC; or	92	
	· Failure to comply with section 96(1).	96(1)	
2	· Failure to comply with a repair and removal notice;	61	<ul style="list-style-type: none"> · Up to R2 million fine; or · Up to 5 years in prison/ community service; or · Both.
	· Failure to comply with a coastal protection notice or coastal access notice;	61	
	· Hindering a person authorised to act in terms of the ICM Act;	79	
	· False representation as a person authorised to act in terms of the ICM Act;	79	
	· Constructing, maintaining or extending any structure or other measures on coastal public property to prevent or promote erosion or accretion of the seashore;	15 (2)	
	· Conducting an activity without the required coastal authorisation;	63, 65, 69, 71	
	· Failure to comply with conditions of a coastal authorisation;	66, 69, 71	
· Failure to comply with section 95(1) which relates to the disclosure and conversion of leases or rights held in terms of the Sea-shore Act, 1935 (Act No. 21 of 1935);	95		

Offence Category	Offence	ICM Act Section Contravened	Penalty
2	· Allowing a person to commit an offence related to repair/ removal notices, erosion/ accretion of the seashore in CPP, or existing leases/rights to CPP;	79/61	· Up to R2 million fine; or · Up to 5 years in prison/ community service; or
	· Preventing access to CPP; or	13 (1A)	or
	· Contravention of any other provisions of the ICM Act.	79	· Both.
3	· Offences in terms of regulations promulgated by the Minister (Section 83) or MEC (Section 84).	85	· Up to R2 million fine; or · Up to five years in prison; or · Both

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 a coastal authorisation granted to the offender in terms of the ICM Act. **If a person is found guilty of an offence in the High Court, the previous penalty limitations do not apply and a higher penalty may be imposed.**

NEW: Consequential amendment of the definition of 'coastal authorisation'.

2. Jurisdiction of courts (Section 81)

Any act or omission in contravention of any of the provisions of this Act which is committed:

- by any person in, on or above coastal waters;
- outside coastal waters by any citizen of the Republic or any person ordinarily resident in the Republic; or
- by any person on board any South African vessel

shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic.

Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.

NEW: Section 81 specifies the extra-territorial jurisdiction of South African courts. Textual improvements were made regarding the jurisdiction of courts in respect of offences.

3. Actions in relation to the coastal zone (Section 82)

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 11

GENERAL POWERS AND DUTIES



CHAPTER 11 - 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, which must also include a review on the status of each pipeline discharging effluent into the coastal environment.

1. Regulations

1.1 Regulations by the Minister (Section 83)

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 in Table 7 below:

NEW: Offences and penalties under Sections 79-80 were amended to be more stringent whereby the number of offence categories was reduced and penalties of both categories increased.

Table 7: 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"> · Public access to coastal public property; · Rehabilitation of coastal public property; · Fees, costs and rents for the use of coastal public property; or · Research conducted within or relating to coastal public property.
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"> · The content, revision, implementation, monitoring and evaluation of progress of all coastal management programmes; · The amendment of coastal planning schemes; · The quality of coastal public property and coastal ecosystems; · The factors that need to be taken note of when deciding applications; · The circumstances in which exemption may be given from compliance with a coastal management programme; · The uses of the coastal zone that do not match the coastal planning scheme; · The results needed to be achieved when treating any effluent, waste or storm water that is likely to enter coastal public property, including who needs to monitor this effluent and the methods that should be used to do this; · The appointment, training, powers and supervision of voluntary coastal officers; or · Public safety and behaviour on coastal public property.

Matters for which the Minister may make regulations

7. The procedures that need to be followed relating to applications for coastal authorisation including the following:
 - The conditions that the applicants for coastal authorisation must comply with before and after lodging the application;
 - The application fees to be paid;
 - The authorities that will be competent to issue the different kinds of coastal authorisations;
 - The consultation procedures to be followed with organs of state and other interested and affected parties (I&APs);
 - The authorities whose consent is required before coastal authorisations may be granted;
 - The methods of objecting to applications;
 - The powers of issuing authorities when deciding such applications;
 - The factors that must be taken into account when deciding whether or not to approve the application;
 - The circumstances in which applications must be approved or refused and guidelines which refer to the conditions on
 - Which permits may be issued; and
 - The process that must be followed when coastal authorisations are to be awarded.

8. The contents of coastal authorisations.

9. The provision of security that relates to any obligation that may develop because of activities that are authorised to occur by coastal authorisations, 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:
 - The fees to be paid;
 - The conditions with which the appellant must comply before or after lodging the appeal;
 - The circumstances in which a temporary stay may be granted relating to notices (see sections 59 and 60 of the ICM Act), and also to amending, revoking or cancelling of coastal authorisations.

11. Methods, procedures and conditions of enforcing compliance with coastal authorisations.

12. The issuing and contents of notices to people that have contravened or failed to comply with:
 - A provision of the ICM Act;
 - A coastal management programme; or
 - A condition of a coastal authorisation.

Matters for which the Minister may make regulations

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 in 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 coastal authorisations.

1.2 Regulations by MECs (Section 84)

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 8 below.

Table 8: 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 delineation of coastal management lines;
6. The granting of permission to build or alter a structure that is partly or completely seaward of a coastal management line and the process to be followed (including who may give such permission and under what circumstances and conditions permission may be given);
7. The implementation within the province of any national norm, framework or standard (see section 83(1)(f) of the ICM Act, Table 7 of this document);
8. The management of a special management area; or
9. Any matter that may be necessary to facilitate the implementation of the ICM Act in the province and that is referred to in section 83 of the ICM Act.

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.

NEW: A new subsection is added, such that under special circumstances, the Minister is responsible for making specific regulations.

After consultation with the relevant MEC, the Minister is responsible for making regulations where the area of concern falls with a national protected area, straddles a coastal boundary between two provinces, or extends up to or straddles the borders of South Africa.

1.3 General provisions which apply to regulations (Section 85)

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 9 below.

NEW: Maximum limits for offences in regulations are inserted to provide certainty as to the upper limits of the Minister’s powers.

Table 9: General provisions applicable to regulations

A regulation made by the Minister or MEC may:	Details (if applicable)
<ul style="list-style-type: none"> · 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. 	
<ul style="list-style-type: none"> · Apply generally: 	<ul style="list-style-type: none"> ◦ Throughout South Africa or the relevant province, or only in a certain place or category of place; ◦ To all people or only to a certain category of people; ◦ To all prohibited activities or only to a specific activity or category of activities; or ◦ To all types of waste or other materials or only to a specific type of waste or other material.

A regulation made by the Minister or MEC may:	Details (if applicable)
<ul style="list-style-type: none"> · Differentiate between different: 	<ul style="list-style-type: none"> ◦ Areas or categories of areas; ◦ People or categories of people; ◦ Activities or categories of activities; or ◦ Types of wastes or other materials or categories of types of waste or other materials.
<ul style="list-style-type: none"> · 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"> ◦ Imprisonment for not more than five years; ◦ An appropriate fine not exceeding R2 million; or ◦ Both of the above.

1.4 Consulting with other Ministers (Section 83)

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.

1.5 Amendment of Schedule 2 (Section 86)

The Minister may amend Schedule 2 of the ICM Act (the “Waste Assessment Guidelines”) to ensure that it continues to allow South Africa to meet its obligations under international law.

2. Powers to be exercised by the MEC

NEW: Section 87 is deleted in its entirety as these provisions are now inserted under various sections, where powers relating to the CPZ must be exercised by the Minister, e.g. section 22.

2.1 Directives to Municipalities from MECs (Section 88)

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;
- to implement or monitor compliance with provincial norms and standards; or
- to facilitate the provincial coastal management programme.

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.

3. Delegations and enforcement

3.2 Delegation by the Minister (Section 89) and MEC (Section 91)

The Minister or MEC may delegate most powers or duties assigned to him or her in terms of the ICM Act. The only powers or duties that may not be delegated are the ability to make regulations and publish notices in the *Gazette* (See Table 10 below for details).

NEW: Further clarification is provided in respect to the powers which the Minister may not delegate.

NEW: Section 91 is amended to allow an MEC to delegate to an official within his/her department.

Table 10: Delegation of powers and duties

	Both / Either Minister or MEC	Minister	MEC
May delegate to:	<ul style="list-style-type: none"> · A Traditional Council · The management authority of a special management area 	<ul style="list-style-type: none"> · Any other organ of state (e.g. Department of Mineral Resources) or statutory functionary (e.g. Transnet) · The Director-General · Other officials in the Department of Environmental Affairs · The MEC of a coastal province 	<ul style="list-style-type: none"> · The head of a provincial lead agency · Any other organ of state (e.g. Provincial department responsible for tourism) or statutory functionary (e.g. Provincial Conservation Board) · an official within the MEC's department
Delegation is subject to:	<ul style="list-style-type: none"> · Agreement with the persons or entities specified above, except in the case of delegations to officials within the Department · Any limitations or conditions that the Minister or MEC may impose 	<ul style="list-style-type: none"> · Consultation with the relevant MEC if delegating to a municipality. 	

	Both / Either Minister or MEC	Minister	MEC
Furthermore, such delegation:	<ul style="list-style-type: none"> · Must be in writing · May include the power to sub-delegate · Does not divest the Minister or MEC of the responsibility concerning the exercise of the power or the performance of the duty · May be withdrawn in writing 		
MAY NOT delegate powers or duties to:	<ul style="list-style-type: none"> · Make regulations · Publish notices in the <i>Gazette</i> 		<ul style="list-style-type: none"> · Appoint members of the Provincial Coastal Committee

The Minister (or MEC as applicable) must give notice, in the *Gazette*, of any delegation of power, except in the case of delegations to officials within the Department.

The Minister or 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, or any statute repealed by the ICM Act. The Minister or MEC may also withdraw any delegation made in terms of the ICM Act, in writing.

3.2 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
- Establishing coastal management lines.



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).

NEW: Consequential amendment of the definition of 'coastal set-back lines' to coastal management lines, and clarification of text.

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.

4. General matters

4.1 Urgent action by the Minister or MEC (Section 92)

The Minister or MEC 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) and (4), and 60 (1) 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 Table 10 and section 92 of the ICM Act).

NEW: To allow for improved efficiency in urgent situations, the MEC is now permitted to take the necessary action. Other amendments are consequential to amendment of section 59.

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 (relating to the State's duty to fulfil environmental rights).

Box 11.3: What is the Coastal Viewer?

The coastal viewer is:

- A web based interactive tool to view, query and navigate spatial data from different data custodians;
- A platform to make spatial data available/visible;
- A tool to support decision making processes that require a form of spatial awareness in the absence of GIS; and
- A controlled environment – where users are unable to edit/manipulate data.



Aimed at non-GIS users for basic spatial functions

- **Internet:** <http://mapservice.environment.gov.za/Coastal%20Viewer/>
- off site access

Box 11.2: Oceans and Coast Information Management System

The Oceans and Coasts Branch of the Department of Environmental Affairs, in collaboration with the Department of Science and Technology and key stakeholders, has embarked on an exciting project to develop a national oceans and coastal information management system (OCIMS) for South Africa and extending earth observation capability, as required by the Operation Phakisa: Marine Protection and Governance Initiative 6 Action Plan endorsed by Cabinet. This project has been identified as one of the critical quick win projects of Operation Phakisa and the pressure is on for stakeholders to work together to deliver on this target (For more info on Operation Phakisa see: www.operationphakisa.gov.za).

The OCIMS vision is to: "Develop a locally relevant and globally cognizant technological solution that supports the ecological conservation and economic potential of South Africa's oceans and coasts through information and decision-support for effective governance". OCIMS will be accessible in terms of data and information which can be interactive, manipulated and used as tools for improved decision-making, predictive modelling, research and public information (some areas of the system will be restricted to authorised users only).

The department has appointed the CSIR Meraka Institute to assist in coordinating and leading implementation of this 5-year project. A Project Steering Committee has been established to guide the day-to-day project management of OCIMS and a strategic oversight Working Group guides development and implementation of

NEW: More specific provisions were created with regards to reporting to the Minister.

4.3 Coordination of actions between provinces and municipalities (Section 94)

The MEC must:

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

5. Exemptions (Section 94A):

The Minister may exempt any person, group of persons or organs of state from a provision of the ICM Act, provided it does not conflict with the objectives of the ICM Act. The exemption must be in writing and the Minister must consult with any organ of state that may be affected by such a decision.

NEW: An additional clause is added to allow for exemptions from certain provisions to be granted to organs of state under unforeseen situations. This is to prevent unnecessary statutory amendment and not to hinder service delivery.

The exemption may be subject to:

- conditions
- payment of a fee; and
- amendment or cancellation at any time by the Minister.

CHAPTER 12

MISCELLANEOUS MATTERS



CHAPTER 12 - MISCELLANEOUS MATTERS

This chapter deals with so-called ‘transitional’ or changeover matters and those 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 (coastal use permits) and existing structures (legal and illegal) thereon. This chapter also provides for the repeal of previous legislation. Further, it indicates what is ‘retained’ under the auspices 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 (Section 95)

In order to enable the Minister to establish the nature and extent of existing uses within the coastal zone, the holder of a lease or right in terms of the Sea-Shore Act, 1935 (Act No. 21 of 1935), or a lease within the admiralty reserve, must within 12 months of the commencement of this section provide the Minister with a copy of such a lease. Table 11 below describes the transitional provisions as they apply to existing rights and leases on coastal public property.

NEW: Due to the replacement of coastal leases with coastal use permits, existing leases are no longer required. However, the call for all existing leases would be to assist the Department in determining which activities currently under lease (in terms of the Sea Shore Act, 1935), would need to be listed as requiring a coastal use permit. More specific subsections have been inserted to clearly indicate the process that must be followed.

Table 11: Transitional provisions with respect to existing rights on and leases to coastal public property

If a lease under the Sea-Shore Act relates to:	
<ul style="list-style-type: none">• An activity which is prohibited by notices in terms of section 65(1)(a)(i)	That activity must stop within a period of 180 days from the date of publication of such a notice.
<ul style="list-style-type: none">• An activity requiring a permit in terms of section 65(1)(a)(ii)	An application must be made for a coastal use permit (section 65 (3)) within a period of 180 days of the publication of the notice listing such activities.
<ul style="list-style-type: none">• An activity that is not listed in terms of section 65(1)(a)	That lease is no longer required and therefore lapses and the activity may continue.

Unless directed otherwise, it is not an offence for the applicant to continue with the activity if an application has been made by the deadline, and notification whether the application has been granted or refused has not yet been received. If an applicant is refused a coastal use permit, the activity must stop within a period of 180 days (6 months) of receipt of the refusal.

1.2 Unlawful structures on coastal public property (Section 96)

The ICM Act acknowledges that there are unlawful structures on coastal public property that need to be managed and/or incorporated within the formal regulatory structure imposed by the Act. Generally, the person who erected the structure or the occupier of the structure is obliged to remove the illegal structure and rehabilitate the site. Further details are described by Figure 37 below.

NEW: Consequential amendment due to the replacement of coastal leases with coastal use permits (section 65)

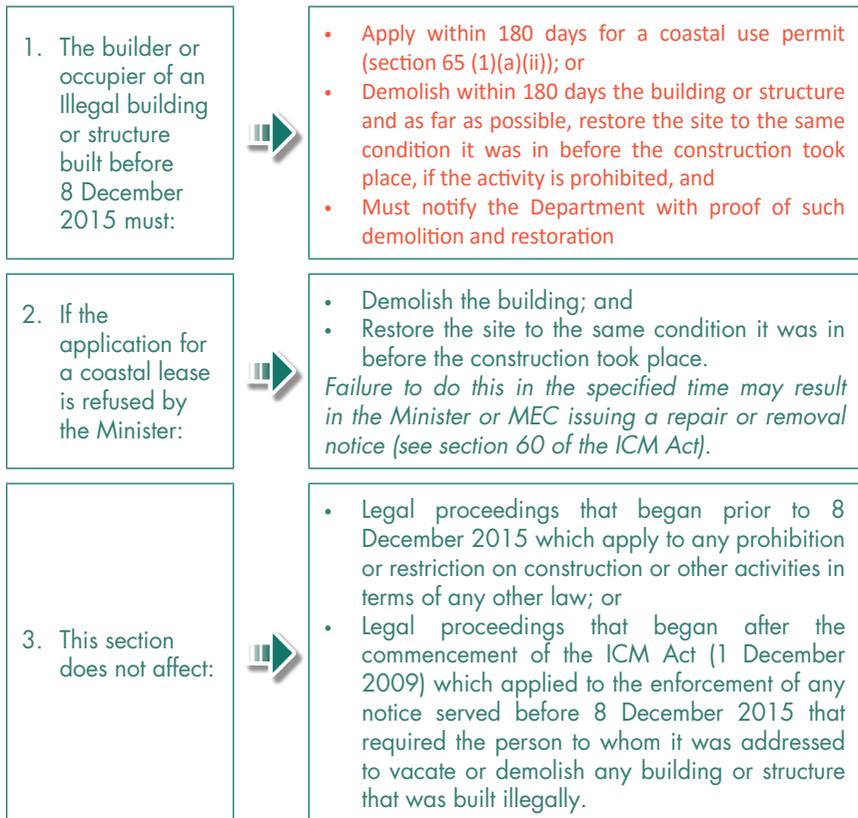


Figure 37: Procedure to be followed in the case of unlawful structures on coastal public property in terms of section 96

This section of the ICM Act specifically requires the Minister to consider the effect that the issuing of a repair or removal notice against an illegal structure may have on the elderly, children, disabled persons, and households headed by women, particularly in low-income households.

1.3 Withdrawal of previous exclusions (Section 97A)

Clauses from section 27 of the original ICM Act that allow for exclusion of an area from coastal public property have been repealed through the ICM Amendment Act. As a transitional provision, all properties excluded under the original section 27 prior to 1 May 2015 (the date of commencement of the ICM Amendment Act), now revert to being coastal public property to the extent defined in section 7.

NEW: Previously, section 97 allowed some activities to continue as if approved. These activities are integrated with the NEMA EIA provisions, thus the section is deleted as it no longer serves a purpose

1.4 Repeal of other legislation (Section 98)

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), is repealed.

NEW: Although section 7 of the Act excludes port structures/ assets from CPP, it is important to retain the principle that the sea and sea-bed is not capable of ownership. Section 97A thus withdraws any previous exclusions from CPP.

1.5 Savings (Section 99)

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 ICM Act 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 - it must be regarded as having been done in terms of the ICM Act.

Box 12.1: 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.



2. General

2.1 Limitation of liability (Section 100)

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.



SCHEDULES



SCHEDULES

Schedule 1: Laws Repealed

This section describes the laws that have been repealed (replaced) by the ICM Act. These are the Sea-Shore Act, 1935 (Act No. 21 of 1935) and the Dumping at Sea Control Act, 1980 (Act No.73 of 1980). The Sea-shore Act, apart from sections assigned to provinces, has been repealed, while the Dumping at Sea Control Act 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.

Schedule 2: Waste Assessment Guidelines

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

• 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.

• 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.

• 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.

• 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.



- **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.

- **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.

- **Monitoring**

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

- **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).



ANNEXURES



ANNEXURE A: DEFINITIONS

In the ICM Act, unless the context indicates otherwise —

“access fee” means a fee that is charged to allow a person to enter coastal public property and includes launching from and entering a vessel launch site with a boat;

“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, potential or cumulative 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;

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

“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 activities listed or specified in terms of Chapter 5 of the NEMA which take place

- (a) in the coastal zone; or
- (b) outside the coastal zone but have or are likely to have direct impact on the coastal zone;

“coastal authorisation” means an authorization under this Act, and includes the authorization to reclaim land in terms of section 7B and 7C, a coastal waters discharge permit in terms of section 69, a general discharge authorisation terms of section 69, a dumping permit in terms of section 71, a coastal use permit in terms of section 65 and any other authorization under this Act, but excludes an environmental authorisation.

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

“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 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 this Act or coastal management objectives.

“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 a specified purpose; 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 16;

“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 waters” means-

- (a) the internal waters, territorial waters, Exclusive Economic Zone and continental shelf of the Republic referred to in sections 3, 4, 7 and 8 of the Maritime Zones Act (Act No. 15 of 1994) respectively; and
- (b) an 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, coastal protected areas, the seashore and coastal waters, 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 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 NEMA;

“estuary” means a body of surface water-

- (a) 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 body of surface water is open to the sea; or
- (c) in respect of which the salinity is higher than freshwater as a result of the influence of the sea, and where there is a salinity gradient between the tidal reach and the mouth of the body of surface water;

“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 discharge authorisation” means an authorisation under section 69(2);

“harbour” means a harbour proclaimed in terms of any law and managed by an organ of state;

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

- (a) exceptional or abnormal weather or sea conditions; 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 approved in terms of legislation regulating land development and that indicates the desirable uses for areas of land but does not create legal rights to use land;

“Land Survey Act” means the Land Survey Act, 1997 (Act No. 8 of 1997);

“land unit” means a cadastral entity which is capable of registration in the deeds registry in term of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“land use scheme”, in relation to an area, means a scheme established by or under legislation and that creates or regulates the use of land in that area, and includes a land use scheme, a town planning scheme, a zoning scheme and any other similar instrument that 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, 1998 (Act No. 117 of 1998); or
- (b) in relation to the implementation of a provision of this Act in an area which falls within both a local municipality and a district municipality, means —
 - (i) the district municipality; or
 - (ii) the local municipality, if the district municipality, by agreement with the local municipality, has assigned the implementation of that provision in that area to the local municipality;

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

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

“National Estuarine Management Protocol” means the National Protocol concerning the management of estuaries contemplated in section 33;

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

“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 NEMA;

“port” means a port as defined in the National Ports Act, 2005 (Act No. 12 of 2005);

“prescribe” means prescribe by regulation;

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

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

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

“reclamation” means the process of artificially creating new land within coastal waters, and includes the creation of an island or peninsula, but excludes beach replenishment by sand pumping for maintenance purposes;

“sea” means

- (a) the high seas;
- (b) all coastal water; and
- (c) land regularly or permanently submerged by sea water, including:
 - (i) the bed, subsoil and substrata beneath those waters, and
 - (ii) land flooded by sea water which subsequently becomes part of the bed of coastal waters, including the substrata beneath such land;

“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;

“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.

In the ICM Act, a word or expression derived from a word or expression defined above has a corresponding meaning unless the context indicates otherwise.



Annexure B: Additional Information

1. Guidelines

- A Step-by-Step Guide for the Designation and Management of Coastal Access in South Africa.
- Guidelines for the Development and Implementation of Estuarine Management Plans.
- National Guideline towards the Establishment of Coastal Management Lines.
- Strategy in terms of the National Environmental Management: Integrated Coastal Management Act, 2008: National Coastal Access Strategy for the facilitation of coastal access in South Africa (2014) (NEMA) (Act 24 of 2008).
- South African Water Quality Guidelines for Coastal Marine Waters: Guideline for Recreational Use (Regulation, 2012).

2. Regulations & Protocols

- National Environmental Management: Integrated Coastal Management Act, 2008 (Act No.24 of 2008): Control of use of vehicles in the Coastal Area.
- National Environmental Management: Integrated Coastal Management Act, 2008 (Act No.24 of 2008) National Estuarine Management Protocol.
- National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) Appeal Regulations.
- National Environmental Management: Integrated Coastal Management Act, 2008 (Act No.24 of 2008): Public Launch Site Regulations.

3. Policy

- Department of Environmental Affairs and Tourism, 2000. White Paper for Sustainable Coastal Development in South Africa. Department of Environmental Affairs and Tourism. 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.

