

(d) a municipality takes precedence over any other coastal planning scheme except one established by the Minister or the MEC, or established within a coastal protected area by the management authority for that protected area.

(5) A coastal planning scheme may only be established with the consent of—

(a) the Minister, if the scheme applies to an area that extends into the sea further than 500 metres from the high-water mark or affects the protection or use of marine living resources; or

(b) the relevant Minister responsible for navigation of vessels on the sea or vessels entering or leaving a port or harbour, if the scheme affects or restricts such vessels.

*(Section 56(5) substituted by section 29 of Act 36 of 2014)*

(6) A coastal planning scheme may not create any rights to use land or coastal waters.

## **57. Coastal planning and land use schemes of municipalities**

(1) Subject to section 56(5), a coastal planning scheme of a municipality may form, and be enforced as part of, any land use scheme adopted by the municipality.

(2)

(a) A municipality may not adopt a land use scheme that is inconsistent with a coastal planning scheme established in terms of this Act.

(b) If there is a conflict between a municipal land use scheme established after the commencement of this Act and a coastal planning scheme made in terms of this Act, the coastal planning scheme shall prevail.

## **CHAPTER 7**

### **PROTECTION OF COASTAL ENVIRONMENT**

#### ***Part 1***

#### ***Assessing, avoiding and minimising adverse effects***

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

(1)

(a) Section 28 of the National Environmental Management Act applies, subject to the necessary changes, to any impact caused by any person and that has an adverse effect on the coastal environment.

(b) For the purposes of the application of section 28 a reference in that section to -

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

## **59. Coastal protection notice and coastal access notice**

- (1) If the Minister or MEC has reason to believe that a person has, either prior to or after the commencement of this Act, carried out, is carrying out, or intends to carry out, an activity that has, is having, or is likely to have, an adverse effect on the coastal environment then, subject to subsection (2), he or she may issue a written coastal protection notice to the person responsible for that activity—  
*(Words preceding section 59(1)(a) substituted by section 30(a) of Act 36 of 2014)*
- (a) prohibiting the activity if it is not already prohibited in terms of this Act; and
  - (b) instructing that person -

- (i) to take appropriate steps in terms of this Act or any other applicable legislation to protect the environment;
  - (ii) to investigate and evaluate the impact of an activity on an aspect of the coastal environment in accordance with Chapter 5 of the National Environmental Management Act; or
  - (iii) to stop or postpone the activity for a reasonable period to allow for the investigation to be carried out and for the Minister or MEC to evaluate the report.
- (2) Before exercising a power to issue a coastal protection notice under subsection (1), the Minister or MEC must—
- (Words preceding section 59(2)(a) substituted by section 30(b) of Act 36 of 2014)*
- (a) consult with any other organ of state that authorised, or is competent to authorise, the undertaking of the activity or proposed activity concerned; and
  - (b) give the person to whom the coastal protection notice is to be addressed, an opportunity of making representations.
- (3) .....
- (Section 59(3) deleted by section 30(c) of Act 36 of 2014)*
- (4) A coastal protection notice in terms of subsection (1) -
- (a) must state -
    - (i) the reasons for the notice;
    - (ii) the period within which anything required by the notice must be carried out; and
    - (iii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9;

*(Second (ii) in section 59(4)(a) renumbered to (iii) by section 30(d) of Act 36 of 2014)*
  - (b) may instruct the person to whom it is addressed, among other matters -
    - (i) to build, maintain or demolish any specified works;
    - (ii) to close a public access or prevent unauthorised access to coastal public property at a specified place;

- (iii) to plant, cultivate, preserve or stop damaging indigenous vegetation at a specified place;
- (iv) to stop altering the geographical features of land at a specified place;
- (v) to build or maintain any specified works at a specified place to protect land from wind erosion;
- (vi) to rehabilitate land at a specified place;
- (vii) to remove stock from land; or
- (viii) to take measures to protect indigenous fauna.

- (5) If the Minister or MEC has reason to believe that a person has, either prior to or after the commencement of this Act, carried out, is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, the Minister or MEC may issue a written coastal access notice to that person—

*(Words preceding section 59(5)(a) substituted by section 30(e) of Act 36 of 2014)*

- (a) prohibiting the activity if it is not already prohibited in terms of this Act; and
- (b) instructing that person to take appropriate steps in terms of this Act or any other applicable legislation to allow natural persons access to the coastal public property.

- (6) When issuing a notice contemplated in subsection (5), subsections (2) and (4) apply with the necessary changes.

*(Section 59(6) substituted by section 30(f) of Act 36 of 2014)*

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

- (1) The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure -
- (a) is having or is likely to have an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or
  - (b) has been erected, constructed or upgraded in contravention of this Act or any other law.
- (2) Before exercising a power to issue a repair and removal notice under subsection (1), the Minister or MEC must-

- (a) consult with any other organ of state that authorised or is competent to authorise the undertaking of the activity or proposed activity concerned; and
  - (b) give the person to whom the repair and removal notice is to be addressed an opportunity to make representations.
- (3) .....
- (Section 60(3) deleted by section 31 of Act 36 of 2014)*
- (4) A repair and removal notice in terms of subsection (1) -
- (a) must state -
    - (i) the reasons for the notice; and
    - (ii) that the person to whom it is addressed may appeal against the notice in terms of Chapter 9; and
  - (b) may instruct the person responsible for the structure -
    - (i) to remove the structure from the coastal zone or place where it is situated within a specified period;
    - (ii) to rehabilitate the site and as far as is reasonable, to restore it to a natural state;
    - (iii) to repair the structure to the satisfaction of the Minister or the MEC within the time stated in the notice; or
    - (iv) to take any other appropriate steps in terms of this Act or any other applicable legislation to secure the removal or repair of the structure.
- (5) If a person responsible for a structure referred to in subsection (1) cannot readily be found, the Minister or the MEC, instead of issuing a notice in accordance with subsection (4), may -
- (a) publish a notice that complies with the provisions of subsection (2) once in the *Gazette* and once a week for two consecutive weeks in a newspaper circulating in the area in which the structure in question is situated; and
  - (b) affix a copy of the notice to the structure in question during the period of advertisement.

## 61. Failure to comply with certain notices

Prepared by:

If a person fails to comply with a notice issued in terms of section 59(1) or (5) or section 60(1) which requires that person to carry out any specific action, or if the person responsible is not identified after publication of a notice in terms of section 60(5), the Minister or the MEC who issued the notice may instruct appropriate persons to -

- (a) carry out what is required by the notice; and
- (b) recover from the person to whom the notice was addressed, or in the circumstances referred to in section 60(4) from any person subsequently found to be responsible for the structure, the costs reasonably incurred in carrying out the required action.

## **Part 2**

### **Regulation of coastal zone**

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

(1) An organ of state that is responsible for implementing national, provincial or municipal legislation that regulates the planning or development of land must, in a manner that conforms to the principles of co-operative governance contained in Chapter 3 of the Constitution, apply that legislation in relation to land in the coastal protection zone in a way that gives effect to the purposes for which the protection zone is established as set out in section 17.

(2) .....

*(Section 62(2) deleted by section 32 of Act 36 of 2014)*

## **Part 3**

### **Environmental authorisations**

#### **63. Environmental authorisations for coastal activities**

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

- (a) the representations made by the applicant and by interested and affected parties;
- (b) the extent to which the applicant has in the past complied with similar authorisations;
- (c) whether coastal public property, the coastal protection zone or coastal access land will be affected, and if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;

- (d) the estuarine management plans, coastal management programmes, coastal management lines and coastal management objectives applicable in the area;

*(Section 63(1)(d) substituted by section 33(a) of Act 36 of 2014)*

- (e) the socio-economic impact if the activity -

- (i) is authorised;

- (ii) is not authorised;

- (f) .....

*(Section 63(1)(f) deleted by section 33(b) of Act 36 of 2014)*

- (g) the likely impact of coastal environmental processes on the proposed activity;

*(Section 63(1)(g) amended by section 33(c) of Act 36 of 2014)*

- (h) whether the development or activity—

- (i) 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;

- (ii) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;

- (iii) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;

- (iv) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;

- (v) is likely to be significantly damaged or prejudiced by dynamic coastal processes;

- (vi) would substantially prejudice the achievement of any coastal management objective; or

- (vii) would be contrary to the interests of the whole community;

*(Section 63(1)(h) substituted by section 33(d) of Act 36 of 2014)*

- (i) whether the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land;

*(Section 63(1)(i) added by section 33(e) of Act 36 of 2014)*

- (j) whether 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; and

*(Section 63(1)(j) added by section 33(e) of Act 36 of 2014)*

- (k) the objects of this Act, where applicable.

*(Section 63(1)(k) added by section 33(e) of Act 36 of 2014)*

(2) .....

*(Section 63(2) deleted by section 33(f) of Act 36 of 2014)*

(3) .....

*(Section 63(3) deleted by section 33(f) of Act 36 of 2014)*

(4) .....

*(Section 63(4) deleted by section 33(f) of Act 36 of 2014)*

- (5) The competent authority must ensure that the terms and conditions of any environmental authorisation are consistent with any applicable coastal management programmes and promote the attainment of coastal management objectives in the area concerned.

- (6) Where an environmental authorisation is not required for coastal activities, the Minister may, by notice in the *Gazette* list such activities requiring a permit or licence.

64. ....

*(Section 64 repealed by section 34 of Act 36 of 2014)*

#### **Part 4**

#### **Use of coastal public property**

*(Heading of Part 4 of Chapter 7 substituted by section 35 of Act 36 of 2014)*

#### **65. Award of coastal use permits on coastal public property**

- (1) The Minister may by notice in the *Gazette*—

- (a) list activities that—

- (i) are prohibited within coastal public property; or

- (ii) require a coastal use permit from the Minister; and

(b) set different user charges for coastal use permits in terms of paragraph (a)(ii),

provided that such activities do not require environmental authorisation in terms of Chapter 5 of the National Environmental Management Act.

(2) No person may—

(a) undertake an activity prohibited in terms of subsection (1)(a)(i);

(b) undertake an activity referred to in subsection (1)(a)(ii) without a coastal use permit; or

(c) contravene any conditions determined in a coastal use permit referred to in section 66.

(3) A coastal use permit in terms of subsection (1)(a)(ii) may, subject to section 66, be awarded by the Minister either—

(a) on application by a person; or

(b) if the Minister so determines in any specific case, through a prescribed process.

(4) An application for a coastal use permit must be lodged in the prescribed manner.

(5) A coastal use permit awarded in terms of this Chapter does not relieve the holder thereof from the obligation to—

(a) obtain any other coastal authorisation that may be required in terms of this Act or any other authorisation in terms of other legislation; or

(b) comply with any other legislation.

*(Section 65 substituted by section 36 of Act 36 of 2014)*

*(Commencement date of section 65: 5 February 2016)*

## **66. Terms of coastal use permits**

A coastal use permit—

(a) must be awarded for a fixed period of time of not more than 20 years whereafter a new application must be made in terms of section 65(3) and (4);

(b) is subject to any conditions determined by the Minister; and

- (c) must provide for the payment by the holder thereof of a user charge determined by the Minister in terms of section 65(1)(b).

*(Section 66 substituted by section 37 of Act 36 of 2014)*

*(Commencement date of section 66: 5 February 2016)*

#### **66A. Leases in admiralty reserves**

- (1) Notwithstanding section 7(1)(e), 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.
- (2) A lease referred to in subsection (1), must be managed as prescribed by the Minister and until so prescribed, such leases must be managed in a manner that is consistent with the purpose of coastal public property as set out in section 7A.

*(Section 66A inserted by section 38 of Act 36 of 2014)*

### **Part 5**

#### **General provisions**

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

- (1) Subject to the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may direct that land within the coastal zone be temporarily occupied to build, maintain or repair works to implement a coastal management programme, or to respond to pollution incidents or emergency situations, and may for this purpose -
- (a) take from the land stone, gravel, sand, earth or other material;
  - (b) deposit materials on it; and
  - (c) construct and use temporary works on it, including roads.
- (2) Notwithstanding section 89, the powers of the Minister in terms of subsection (1) may be delegated to-
- (a) the MEC, who may subdelegate this power to a municipality in that province; or
  - (b) an official in that Department.

- (3) If the land is private property, the Minister or the MEC, acting in terms of subsection (1), must, before the land is occupied, give the occupier and the owner of the land reasonable notice, in writing, of the intention to occupy and the purpose of the occupation.

**68. Amendment, revocation, suspension or cancellation of authorisations**

- (1) An issuing authority may amend, revoke, suspend or cancel a coastal authorisation issued in terms of this Act, if—
- (a) the holder of the coastal authorisation contravenes or fails to comply with a condition subject to which the coastal authorisation was issued;
  - (b) it is in conflict with a coastal management programme or will significantly prejudice the attainment of a coastal management objective;
  - (c) changes in circumstances require such amendment, revocation, suspension or cancellation; or
  - (d) it is necessary to meet the Republic's international obligations.
- (2) An issuing authority must by written notice delivered to the holder of the coastal authorisation, or sent by registered post to the holder's last known address, request the holder to make written representations within a period of 30 days from the date of the notice as to why the coastal authorisation should not be amended, revoked, suspended or cancelled, as the case may be.
- (3) After the expiry of the period referred to in subsection (2) the issuing authority must consider the matter in the light of all relevant circumstances, including any representations made by the holder, and may—
- (a) revoke the coastal authorisation;
  - (b) suspend the coastal authorisation for a period determined by the issuing authority;
  - (c) cancel the coastal authorisation from a date determined by the issuing authority;
  - (d) alter the terms or conditions of the coastal authorisation; or
  - (e) decide not to amend, revoke, suspend or cancel the coastal authorisation.
- (4) Notwithstanding subsections (2) and (3), the issuing authority may, whenever it is in the interests of the promotion, protection or utilisation on a sustainable basis of the coastal zone, at any time by written notice to the holder of a coastal authorisation amend, revoke, suspend or cancel the coastal authorisation.

- (5) If the issuing authority intends to exercise the powers under subsection (4), subsection (2) shall apply with the necessary changes.
- (6) If the Minister or an issuing authority has reason to believe that it is urgently necessary to exercise powers under subsection (1), (3) or (4) in order to protect the coastal environment or human health and well-being, the Minister or issuing authority may, by notice to the holder of a coastal authorisation, temporarily suspend the coastal authorisation and then follow the procedure referred to in subsection (3).
- (7) A competent authority, when exercising the power to amend, withdraw or suspend an environmental authorisation in terms of the National Environmental Management Act, must consider the factors referred to in subsections (1), (4), (5) and (6) with the necessary changes.

*(Section 68 substituted by section 39 of Act 36 of 2014)*

## **CHAPTER 8 MARINE AND COASTAL POLLUTION CONTROL**

### **69. Discharge of effluent into coastal waters**

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

*(Section 69(1) substituted by section 40(b) of Act 36 of 2014)*

- (2) The Minister may by notice in the *Gazette* authorise persons in general, or a category of persons, to discharge effluent into coastal waters, and in instances of discharge of effluent into an estuary, only after consultation with the Minister responsible for water affairs.
- (3) Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a general discharge authorisation referred to in subsection (2) must apply to the Department for a coastal waters discharge permit.

*(Section 69(3) substituted by section 40(c) of Act 36 of 2014)*

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

*(Words preceding section 69(4)(a) substituted by section 40(d) of Act 36 of 2014)*