

Ugu Lwethu - Our Coast. A profile of coastal KwaZulu-Natal

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10.1 Coastal Legislation

From a legislative point of view, the South African coastal zone has been in a vacuum for a number of years, with legislation governing coastal management being fragmented across the land/sea boundary. As a result, governance of the coastal environment is also fragmented, with different departments and spheres of government taking on different management functions in order to meet their sometimes conflicting mandate.^{1; 2}

Integrated Coastal Management was first popularised in the 1970s in the USA, with the development of their Coastal Zone Management Act in 1972.³ However, not much progress was made on the international front until 1992, when Agenda 21 was adopted at the United Nations Conference on Environment and Development (held in Rio de Janeiro, Brazil). The need for improved management of coastal and marine environments was highlighted in Chapter 17 of Agenda 21.⁴ Integrated coastal management was seen to be a new, innovative approach to coastal management that would

reduce management fragmentation and reconcile the interests and needs of all coastal stakeholders.⁵

In the past, different components of coastal management in South Africa were administrated by different statutes, all of which defined the coast depending on their management objectives. In the early 1970s the South African government realised that coastal-related issues needed attention, due primarily to concerns of over-fishing, oil pollution and coastal development. In 1973, a Coastal Management Division was established by the then Department of Planning and Environment, with staff dedicated to this function being appointed in the early 1980s.⁵

The 1980s also saw the establishment of the Committee for Coastal and Marine Systems within the Council for the Environment, which focused on the need to develop a dedicated policy for managing the coast,^{5; 6} which ultimately led to the development of the prevailing *ICM Act*.

The Phoenix, which ran aground on Sheffield beach in 2011.



Photo: Bronwyn Goble



Key legislation pertinent to coastal management

A range of historic and existing statutes have shaped coastal management in South Africa, and consequently in KZN. These are outlined below.

While it is due to be repealed by the ICM Act, the *Sea-Shore Act (Act No. 21 of 1935)* being one of the oldest environmental statutes in South Africa, is founded on the principle that ownership of the sea and sea-shore is vested in the President, for use by, and benefit of, the public. The Sea-Shore Act focuses on the small area of the “sea-shore”, defined as the water and land falling between the low- and high-water marks. The Act prohibits the establishment of buildings or structures within this zone, unless the land is leased from the State. It further prohibits the dredging of, or deposition in the sea or sea-shore without consent. While effective legally, it fails to address land-based activities sufficiently.

Land-based activities have historically been governed under the *Environment Conservation Act (Act No. 100 of 1982)*, which introduced regulations that specified the coastal zone as being a land/sea interface from 100 m inland of the high-water mark, to the edge of South Africa’s territorial waters.⁷ This was considered to be a “limited zone”, specifically aimed at coastal conservation, and any developments proposed for this strip would be subject to environmental scrutiny. The regulation helped focus Coastal Zone Management in South Africa, and closed loopholes in planning legislation that permitted unsustainable development in the coastal environment.⁸ The regulations were repealed and are no longer in force; however, the ICM Act now offers this protection zone.

The *National Environmental Management Act (Act No. 107 of 1998)* (aka NEMA) is South Africa’s overarching framework for environmental legislation. Through this Act, legislators strived to ensure that the environmental rights presented in the Constitution are protected and fulfilled.³ Chapter 5 of NEMA outlines the environmental assessment process for activities identified as requiring environmental authorisation. This process ensures that all potential environmental and social impacts are assessed and that mitigation measures are included prior to the authorisation and commencement of the activity.

In 2010, new environmental impact assessment regulations and lists of activities requiring environmental authorisations were introduced. These included Listing Notice 3, which

provides additional protection for specific, pre-identified geographic areas, the coastal zone being one such area. In addition, under NEMA there are specific regulations pertaining to the control of vehicles in the coastal zone (as of 2001). The regulations prohibit the recreational use of vehicles in the coastal zone as detailed in *Section 7.2*.

While marine issues were initially governed by the Sea-Shore Act, the use of South Africa’s marine living resources was later governed by the *Marine Living Resources Act (Act No. 18 of 1998)*, which seeks to provide equitable and sustainable utilisation of these resources.³ This statute focuses primarily on the zone seaward of the high-water mark.

The management and conservation of biodiversity is governed by the *Biodiversity Act (Act No. 10 of 2004)*, which provides protection for species and ecosystems (including those in the marine and coastal environment) that merit national and or provincial protection.

The *National Water Act (Act No. 36 of 1998)* aims to protect the quality and supply of fresh water resources to ensure the sustainability of such resources for all users in the Republic. Moreover, ecosystem health and functioning is also achieved through the determination of an “ecological reserve”, which ensures that sufficient water remains in systems to maintain natural functioning, thereby also ensuring that fresh water supply to estuaries is maintained.

In 1992, a new policy formulation process (known as the Coastal Management Policy Programme, CMPP) commenced, in consultation with relevant coastal stakeholders. The CMPP was implemented over a period of five years (from 1992-1997) and included a number of phases.⁵ Once established, the CMPP focused on the drafting of a Green Paper (*Towards Sustainable Coastal Development in South Africa*), which was published in 1998. The Green Paper articulated the need for a coastal policy and laid the foundation for the development of a White Paper (*The White Paper for Sustainable Coastal Development*), which was published in 2000.

The White Paper recognised the need to change our approach to managing the coast, emphasising the promotion of sustainable coastal development through integrated coastal management, and highlighting people-centred management in favour of traditional nature-centred management.⁵ The White Paper described the coastal zone as an area which extends as far seaward and as far landward as is necessary for effective management of this unique environment. It also

recognised that the coast needs to be managed as a system for users to benefit from the opportunities it provides, and set out a vision for the coast, as well as principles, goals and objectives for coastal management.³

Subsequent to the White Paper, a National Coastal Management Bill was developed, the first draft of which was submitted to Cabinet in October/November 2001.⁵ However, substantial redrafting of the document was required, which resulted in protracted delays, and the *National Environmental Management: Integrated Coastal Management Act (Act No. 24 of 2008)* (aka ICM Act) was only assented to in February 2009, and commenced in December 2009, ten years after its conception.

The ICM Act is an expression of South Africa's responsibility to wisely manage its coastal area with its unique natural resources and complex relationship with people, guiding behaviour and actions in the coastal zone 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.⁹

It is evident that management of the KZN coast is extremely complicated, as various national statutes need to be taken into account. Most important is the implementation of the new ICM Act. Key responsibilities for coastal authorities are outlined in Section 10.2. ■

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Top: Ezemvelo KZN Wildlife staff enforcing fisheries regulations.
Centre: Better management of coastal and marine environments ensures long-term use of the diverse resources they provide.
Bottom: Natural coastal beauty, contrasted by dune mining.



Photo: Bruce Mann



Photo: Fiona MacKay



Photo: Fiona MacKay

