

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

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10.2 Implementing the ICM Act

South Africa can boast about having arguably the finest coastal management policy and legislation anywhere. For the first time ever the coast is treated as a single but multi-sectoral resource for the benefit of all, representing a cornerstone for development. Yet, laws are only as good as their supporting infrastructure and effective implementation.

Durban's golden mile, a highly modified coastal zone.



Photo: Bronwyn Goble

In terms of the Constitution, National government is responsible for coastal management, primarily achieved through the development of policies and the promulgation and application of laws. However, much of the actual implementation responsibility is outsourced to coastal provinces and accordingly to their next level of local government structures. Each provincial government in South

Africa is also able to establish its own set of provincial legislation that is tailored to meet specific management needs within that province. Provincial government is responsible for the coordination, monitoring and support of local authorities within each province. Local authorities or municipalities are largely responsible for daily management and enforcement of national and provincial legislation. Municipalities are divided into 1) Metropolitans, which have a population of more than 500 000; 2) Local Municipalities, which fall outside of metropolitan areas and are significantly smaller; and 3) District Municipalities, which are made up of a number of local municipalities, in terms of the *Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)*. In cases where the implementation of a particular provision of the *ICM Act* falls in an area within both a local and a district municipality, jurisdiction falls to the district municipality, but can be assigned to the local municipality by agreement between the two municipal structures.

The *ICM Act* is designed to integrate many different users and levels of activity within the coastal zone in South Africa. Therefore the Act is applicable to many stakeholders from various government agencies and most sectors of civil society. In order to ensure effective coastal management, all three spheres of government are given certain duties and responsibilities. It is thus essential that adequate resources are available and deployed in all three spheres of government to support implementation – i.e. national, provincial and local.

National Government

The Department of Environmental Affairs (DEA) is the national lead agency for integrated coastal management in South Africa. Its Chief Directorate: Integrated Coastal Management (CD: ICM) must ensure the effective implementation of the ICM Act at a national level. Once the 2008 Act came into effect, many existing functions previously handled by other organs of state became the responsibility of the department in addition to new tasks flowing from the *ICM Act* itself. The DEA is thus responsible for a diverse and complex range of functions, and additional capacity and financial resources are required to achieve these objectives.

The *ICM Act* specifies that the DEA will play an active national co-ordinating role. To achieve this, co-ordination with other national departments, provinces and Metros formally occurs through a ministerial committee called MINTECH Working Group 8 (WG8). The *ICM Act* further allows for the establishment of a National Coastal Committee to promote integrated coastal management in the country.

The objective of WG8 is to ensure that effective governance frameworks are developed, maintained and implemented in a manner which ensures that the past, current and future impacts on the marine and coastal environment are minimised, mitigated or managed in line with government policy, legislation, goals and strategies. Moreover, WG8 strives to protect the environment 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.

Provincial Government

The KZN Province is a major stakeholder and beneficiary of a well-managed coastal and marine environment. The goods and services delivered by coastal ecosystems are a pivotal asset and underpin much of the development potential of the Province. Hence careful management of these resources is critical. The provincial lead agency for coastal management in KZN is the KZN Department of Agriculture and Environmental Affairs (DAEA) through its Sub-directorate: Coastal and Biodiversity Management.

The provincial authority is mandated to establish a Provincial Coastal Committee (PCC) to co-ordinate and communicate

coastal management in KZN through the involvement of government and non-government stakeholders.

In addition to its ICM Act responsibilities, the provincial department should also provide support to local and district authorities on matters pertaining to coastal management, mitigation, coastal pollution and other coastal environmental impacts. They also provide strategic support to Ezemvelo KZN Wildlife on biodiversity issues and special area management programmes in KZN. The provincial authority is also tasked with the implementation of the “*Control of Vehicles in the Coastal Zone*” Regulations, which are discussed in Section 7.2.

Local Government

The majority of day-to-day coastal management work takes place at the local government level, through the on-going executive functions of municipalities, district councils and traditional leadership structures. This involves natural resource management, strategic and land use planning, catchment management, coastal and drainage engineering, local economic development, environmental assessment, environmental health and tourism development.

At local government level, institutional arrangements for coastal management are still to be fully developed. There is a general lack of resources and skills dedicated to coastal management, particularly in rural areas. This means that there are needs and opportunities for intervention and proactive coastal management efforts. In an attempt to boost their capacity, some local authorities co-operate with nature conservation agencies and are involved in co-management initiatives with community groups. Coastal working groups have been established in most districts. These promote dialogue between governmental and non-governmental stakeholders and improves co-ordination.

The persistent lack of capacity for coastal management in many municipalities presents a significant hindrance to the effective implementation of the ICM Act. As a result, the mobilization and allocation of funds to municipalities is crucial. Furthermore, capacity building at this level is imperative. ■



ROLES AND RESPONSIBILITIES OF SPHERES OF GOVERNMENT IN TERMS OF THE ICM ACT	
Section of the ICM Act	
CHAPTER 1: INTERPRETATION, OBJECTS AND APPLICATION OF ACT	
	S 3: State must act as the trustee of the coastal zone.
CHAPTER 2: COASTAL ZONE	
Coastal Public Property	S 11: (1) Coastal public property must be held in trust by the State on behalf of the citizens of the Republic. S 12: (a) The State must ensure that coastal public property is used, managed, protected and enhanced in the interests of the whole community, and (b) must take reasonable legislative and other measures it considers necessary to protect coastal public property. S 13: (3) The Minister must approve any fees charged for access to coastal public property. And must (4) engage in public participation before granting approval for the imposition of a fee for access to coastal public property.
Coastal Access land	S 18: The Local Authority must (within 4 years of commencement of the Act) make a by-law that designates strips of land as coastal access land in order to secure public access to that coastal public property. S 19: (a) Local authorities must assess all environmental impacts of designating coastal access land; (b) consult with interested and affected parties; and (c) give notice of intended designations or withdrawals to the land owner. S 20: (1)(a) Must signpost entry points to that coastal access land; (b) control the use of, and activities on, that land; (c) protect and enforce the rights of the public to use that land; (d) maintain coastal access land so as to ensure that the public has access to coastal public property; (e) within available resources, municipalities should provide facilities that promote access to and use of coastal public property; (f) ensure that use of coastal access land does not cause any adverse effects on the environment; (g) remove public access servitudes that are causing adverse effects; (h) describe or indicate all coastal access land in CMP and SDF; (i) any other actions required; and (j) report to the MEC (within 2 years of the commencement of the Act) on measures taken to implement coastal access land.
Coastal Waters	S 21: Any organ of state that has a legal responsibility for managing any activities on or in coastal waters must do so (a) in the interests of the whole community; and (b) in accordance with the Republic's obligations under international law.
Set-back lines	S 25: (1) An MEC must establish coastal set-back lines to, amongst other things; protect coastal public property, private property and public safety, and in so doing, must (2) undertake consultation with interested and affected parties before set back lines are established. S 25: (3) Local Authority must delineate coastal set-back line on map(s) forming part of the municipality's zoning scheme.
Determining and adjusting coastal boundary	S 26: (4) When determining or adjusting coastal boundaries, the Minister or MEC must give interested and affected parties the opportunity to comment. S 26: (5) When determining or adjusting coastal boundaries, the Minister or MEC must inform the local municipality within whose area of jurisdiction the coastal boundary is situated.
CHAPTER 3: BOUNDARIES OF COASTAL AREAS	
Determining and adjusting coastal boundary of coastal public property	S 27: (1)(a)-(e) In determining or adjusting the boundary of coastal public property, the Minister must take into account, amongst other things, the dynamic nature of the shoreline, the importance of ensuring natural functioning and the potential effects of sea-level rise. (3) The Minister must undertake consultation with interested and affected parties before adjusting coastal boundaries.
Determining and adjusting coastal boundaries of coastal protection zone	S 28: (1) The MEC may not determine or adjust the coastal boundaries of the coastal protection zone in a manner that changes the coastal boundaries of coastal public property. In determining or adjusting the boundary of the coastal protection zone the MEC must (3)(a)-(f) take into account, amongst other things, the purpose for which the coastal protection zone is established.
Determining and adjusting coastal boundaries of coastal access land	S 29: (a)-(f) In determining or adjusting a boundary of coastal access land a municipality must take into account, amongst other things, the kind of public access required and any potential adverse effects that public access may cause.
Entry onto land	S 30: (4) The Minister, MEC or municipality must compensate the owner for damage or repair damage arising from entry to land granted for purpose of determining/adjusting coastal boundary.
Marking coastal boundaries on zoning maps	S 31: The local municipality within whose area of jurisdiction the coastal boundary is situated must delineate that coastal boundary on a map(s) that forms part of its zoning scheme.
Endorsements by Register of Deeds	S 32: (1) The Minister, MEC or municipality must notify the Registrar of Deeds when the coastal boundary is determined/adjusted.
CHAPTER 4: ESTUARIES	
National estuarine management protocol	S 33: (2) The Minister must (within four years of the commencement of the Act) prescribe a national estuarine management protocol. In so doing, must (3) must, amongst other things, determine a strategic vision for integrated management of estuaries; set standards for the management of estuaries; give guidance on how estuaries must be managed; establish minimum requirements of estuary management plans; identify who must prepare estuarine management plans; specify the process for reviewing estuary management plans; and must consult with interested and affected parties.
Estuarine Management Plans	S 34: (1)(a)-(b): The responsible body for developing an estuarine management plan (EstMP), must follow a public participation process; ensure that the EMP is consistent with the national estuarine management protocol and the national coastal management programme, as well as any applicable municipal coastal management programme.
CHAPTER 5: INSTITUTIONAL ARRANGEMENTS	
National Coastal Committee	S 35: (1) The Minister must establish a National Coastal Committee and determine its powers, and (2) must provide administrative support for National Coastal Committee. And S 36: (1) must appoint persons to the National Coastal Committee. The Minister additionally has obligations in terms of S 36: (2)(b) and (4) concerning who to appoint to the committee and determination of rate of remuneration and allowances.
Provincial lead agency	S 38: (1) The Premier must (within two months of the commencement of this Act) designate a provincial organ of state to function as the lead agency for coastal management in the Province. (2) The provincial lead agent, must amongst others, co-ordinate the implementation of a coastal management programme; monitor coastal management; monitor the state of the coastal environment; provide logistical and administrative support to the Provincial Coastal Committee; and take measures to monitor compliance.
Provincial Coastal Committee	S 39: The MEC must (within 12 months of the commencement of this Act) establish a Provincial Coastal Committee for the Province. And must S 40: (1) determine the composition of the provincial coastal committee, (2) appoint persons to the Provincial Coastal Committee, and (4) determine rates of remuneration for people appointed to the Provincial Coastal Committee.
Coastal management programmes	S 44: (1) The Minister must (within four years of the commencement of this Act) prepare and adopt a national coastal management programme (the contents of which are prescribed by S 45. This must be reviewed once every five years, and if necessary make amendments. (2) Before adoption of a coastal management programme, the Minister must invite members of the public to submit comments. (3)(a) The Minister must within 60 days of adoption of a coastal management programme, give notice to the public of the adoption of the programme, and make copies available to the public. (b) The Minister must also make a summary of the programme available to the public.

Coastal management programmes (continued)	S 46: (1) The MEC must (within four years of the commencement of this Act) prepare and adopt a provincial coastal management programme (the contents of which is prescribed by S 47). This must be reviewed once every five years. (2) Before adoption of a coastal management programme, the Minister must invite members of the public to submit comments. (3)(a) The Minister must within 60 days of adoption of a coastal management programme, give notice to the public of the adoption of the programme, and make copies available to the public. (b) The Minister must also make a summary of the programme available to the public. S 48: (1) The local authority must (within four years of the commencement of this Act) prepare and adopt a municipal coastal management programme (the contents of which is prescribed by S 49). This must be reviewed once every five years. (2) Before adoption of a coastal management programme, the minister must invite members of the public to submit comments. (3)(a) The Minister must within 60 days of adoption of a coastal management programme, give notice to the public of the adoption of the programme, and make copies available to the public. (b) The Minister must also make a summary of the programme available to the public.
Ensuring consistency between coastal management programmes and other statutory plans	S 52: (2) The Minister must ensure that there is consistency between the national coastal management plan and other statutory plans adopted by a national organ of state. S 52: (3) The MEC must ensure that there is consistency between provincial coastal management plans and other statutory plans adopted by a national or provincial organ of state. S 52: (4) The local authority must ensure that its integrated development plans are consistent with other statutory plans adopted by either national or provincial organ of state.
Consultation and public participation	S 53: If exercising a power under the Act which requires consultation and public participation, the competent authority must consult with all Ministers, MECs or municipalities whose areas of responsibilities will be affected by the exercise of such power; publish intention to exercise the power in a manner that is reasonably likely to bring it to the attention of the public; and invite representations by notice in the Gazette.
Powers to review coastal management programmes	S 54: (1) The Minister may review any provincial coastal management programme, in so doing the Minister must S 54(2) determine either it meets the requirements (S 47), is consistent with the national coastal management programme, gives adequate protection to coastal public property, and provides an appropriate policy framework for effective and efficient coastal management. S 54: (4) The MEC must amend or replace a provincial coastal management programme if notified to do so by the Minister. S 55: (1) The MEC may at any time review a municipal Coastal Management Programme, and in doing so (2) must determine whether the programme meets specified criteria, and require the municipality to amend/replace the programme if such criteria are not met.
CHAPTER 7: PROTECTION OF COASTAL ENVIRONMENT	
Duty to avoid causing adverse effects on coastal environment	S 58(1): Section 28 of the National Environmental Management Act applies to any impact caused by any person and that has an adverse effect on the coastal environment.
Coastal protection notice and coastal access notice	S 59: If there is reason to believe that a person is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the coastal environment then the Minister may issue a written coastal protection notice prohibiting the activity. The Minister, must S 59(2) (a) consult with other organs of state that have authorised or are competent to authorize the activity and (b) give the person whom the coastal protection notice is being served and opportunity to make representation. The issued coastal protection notice must state, S 59(4)(a) the reason for the notice, the period within which the required notice should be carried out, and that the person may appeal against the notice in terms of Chapter 9 of the Act.
Repair or removal of structures within coastal zone	S 60: (1) The Minister or MEC may issue written repair or removal notices to any person responsible for structures on or within the coastal zone, (a) if the structure is having or likely to have an adverse effect on the coastal environment by virtue of its existence; (b) or has been erected, constructed or upgraded in contravention of the Act. (2) In so doing, the Minister or MEC must (a) consult with other organs of state that have authorized or are competent to authorize the activity and (b) give the person whom the coastal protection notice is being served and opportunity to make representation.
Environmental authorisation	S 63: (1) Where environmental authorisation in terms of Chapter 5 of NEMA is required, the competent authority must take into account the provisions outlined in (a)-(h).
Amendment, revocation, suspension or cancellation of authorisations	S 68: (1) If the issuing authority of a coastal lease may amend, revoke, suspend or cancel an authorisation issued, if the holder of the authorisation contravenes or fails to comply with a condition of the authorisation, the authorisation is in conflict with a coastal management programme or changes in circumstances require such action. In so doing the issuing authority, must S 68: (2) give written notice and allow the holder of the authorisation 30 days to make representation as to why authorisation should not be amended, revoked, suspend or cancelled.
CHAPTER 8: MARINE AND COASTAL POLLUTION CONTROL	
Discharge of effluent into coastal waters	S 69: (2) The Minister may by notice in the Gazette authorise persons in general, or a category of persons, to discharge effluent into coastal waters only after consultation with the Minister responsible for water affairs.
Dumping permits	S 71: (2) Minister may issue permits for dumping at sea once regard is given to the Waste Assessment Guidelines (Schedule 2), and Coastal Management Programme applicable in the area, likely environmental impacts, national legislation on waste and the interests of the whole community. Permits may only be issued for the dumping of wastes and materials listed in S 71: (3), and the Minister is prohibited from issuing dumping permits in specified circumstances.
Emergency dumping at sea	The Minister may dispense with the prescribed procedure for dumping at sea (a) if dumping is necessary to avert an emergency and (b) there is not other feasible solution. S 72: (2) Before such a permit is issued the Minister must consult with foreign states that may be affected and the International Maritime Organization (IMO). S 72: (3) The Minister must follow the recommendations prescribed by the IMO and inform them of any actions taken.
CHAPTER 9: APPEALS	
Consideration of appeals	S 74: The Minister or MEC must consider appeals lodged. (5) The Minister or MEC may extend the period within which an appeal may be lodged, and (6) may dismiss and appeal that he or she considers trivial or frivolous.
CHAPTER 10: ENFORCEMENT	
Actions in relation to coastal zone	S 82: The Minister, MEC or local authority may institute legal proceedings or take other appropriate measures to prevent damage, or recover damages for harm suffered to coastal public property or the coastal environment and to abate nuisances affecting the rights of the public to coastal public property.
CHAPTER 11: GENERAL POWERS AND DUTIES	
Regulations	S 85: The Minister and MEC has the right to make regulations, but must publish draft regulations for public comment and take submissions into account.
CHAPTER 12: MISCELLANEOUS MATTERS	
Limitation of liability	S 100: Neither the State nor any person is liable for any damage or loss caused by (a) the exercise of any power or the performance of any duty in terms of the Act or (2) the failure to exercise any power or perform any duty in terms of this Act unless the exercise of or failure to exercise the power, or performance or failure to perform the duty, was unlawful, negligent or in bad faith.
All spheres of Government National Government Provincial and National Government Local Government Provincial Government	

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