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840 Draft National Environmental Management: Integrated Coastal Management Amendment Bill, 2011: For general comments

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GENERAL NOTICE

NOTICE 840 OF 2011

NATIONAL DEPARTMENT OF ENVIRONMENTAL AFFAIRS

DRAFT NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT AMENDMENT BILL, 2011 FOR GENERAL COMMENT

Minister, B. E. E. Molewa, Minister of Water and Environmental Affairs, hereby publishes for public comment, the draft National Environmental Management: Integrated Coastal Management Amendment Bill, 2011 as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the Amendment Bill are invited to do so by no later than 16h00 on **31 JANUARY 2012**. Comments received after this time may not be considered. All representations and comments must be submitted in writing to the Deputy Director-General of the Department of Environmental Affairs, Branch Oceans and Coasts:

**By post to: The Deputy Director-General
Environmental Affairs
Oceans and Coasts
Attention: Ryan Peter
PO Box 52126
V and A Waterfront, Cape Town
8002**

By e-mail to: Jpeter@environment.gov.za

**By hand-delivery to: The national Department of Environmental Affairs
Attention: The Deputy Director-General
East Pier Shed
East Pier V and A Waterfront
Cape Town**

**B. E. E. MOLEWA
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT
AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill
published in Government Gazette No. ... of ... 2011) (The English text is the official text of the
Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B - 2012]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

B I L L

To amend the National Environmental: Integrated Coastal Management Act so as to amend certain definitions; to clarify coastal public property and the ownership of structures erected on and in coastal public property; to remove the power to exclude areas from coastal public property; to simplify and amend powers relating to coastal leases; to extend the powers of MECs to issue coastal protection notices and coastal access notices; to limit the renewal of dumping permits; to amend the composition of the National Coastal Committee; to clarify the powers of delegation by MECs; to revise offences and increase penalties; to improve authorisation processes; to provide for exemptions; to provide for transitional matters; to effect certain textual alterations; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:-

Amendment of section 1 of Act 24 of 2008

1. Section 1 of the Integrated Coastal Management Act, 2008 (in this Act referred to as the principal Act), is hereby amended—
- (a) by the substitution for the definition of “adverse effect” of the following definition:
- “adverse effect” means any actual **[or]**, 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; **[and, without limiting the term, includes any actual or potential impact on the environment that results in—**
- (a) a detrimental effect on the health or well-being of a person;
- (b) an impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or
- (c) a detrimental effect on the environment due to a significant impact or cumulative effect of that impact taken together with other impacts;]”;

- (b) by the substitution for the definition of "authorisation" of the following definition:

" "authorisation" means an authorisation under this Act, and includes a coastal waters discharge permit in terms of section 69, a general authorisation in terms of section 69, a dumping permit in terms of section 71, a coastal ~~[lease, a coastal concession]~~ authorisation in terms of section 65 and any authorisation that is regarded as being an authorisation under this Act, but excludes an environmental authorisation;"

- (c) by the insertion after the definition of "authorisation" of the following definition:

" "Chart Datum" means the height referencing datum as determined by the Hydrographer of the South African Navy;"

- (d) by the substitution of the definition of "coastal activities" of the following definition:

" "coastal activities" means **[coastal]** activities listed or specified in terms of Chapter 5 of the National Environmental Management Act which take place in or have a direct impact on the coastal zone;"

- (e) by the substitution of the definition of "coastal protection zone" of the following definition:

" "coastal protection zone" means the coastal protection zone contemplated in section ~~[17]~~16;"

- (f) by the substitution for the definition of "coastal waters" of the following definition:

" "coastal waters" means—

- (a) marine waters that form part of the internal waters, **[or]** territorial waters or exclusive economic zone of the Republic referred to in sections 3, **[and]** 4 and 7 of the Maritime Zones Act, 1994 (Act No.15 of 1994), respectively; and
- (b) subject to section 26, an estuary;"

- (g) by the substitution for the definition for the definition of "estuary" of the following definition:

" "estuary" means a body of surface water that is part of a water course that is permanently or periodically open to marine waters [the sea]; and—

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

- (h) by the insertion after the definition of "general authorisation" of the following definition:

" "harbour" means a port or harbour proclaimed in terms any law and managed by an organ of State;"

- (i) by the substitution for the definition of "high water mark" of the following definition:
- " "high water mark" means—
- (a) a line determined by the Minister by notice in the Gazette in terms of section 14(7), that is relative to the Chart Datum; or
- (b) pending determination by the Minister in terms of subparagraph (a), the highest line reached by [coastal] marine waters during an ordinary storm occurring in the most stormy period of the year but excluding any line reached as a result of—
- [(a)](i) exceptional or abnormal floods or storms [that occur no more than once in ten years]; or
- [(b)](ii) an estuary being closed to [the sea] marine waters;";
- (j) by the insertion after the definition of "provincial lead agency" of the following definition:
- " "marine waters" means the body of salt water forming part of the ocean;";
- (k) by the substitution for the definition of "Minister" of the following definition:
- " "Minister" means the Minister responsible for environmental affairs [of Environmental Affairs];";
- (l) by the insertion after the definition of "provincial lead agency" of the following definition:
- " "reclaimed land" means land, including an island, reclaimed from coastal waters that is capable of registration in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937);
- (m) by the substitution for the definition of "sea" of the following definition:
- " "sea" means—
- ["sea" means all marine waters, including—**
- (a) the high seas;**
- (b) all marine waters under the jurisdiction of any state;**
- and**
- (c) the bed, subsoil and substrata beneath those waters, but does not include estuaries;]**
- (a) all marine waters under the jurisdiction of any state, including estuaries, and the high seas;
- (b) land submerged by marine waters, including—
- (i) the bed, subsoil and substrata beneath those waters;
- and
- (ii) land flooded by marine waters which subsequently becomes part of the bed of coastal waters, including the substrata beneath such land;";
- (n) by the substitution for the definition of "Waste Assessment Guidelines" of the following definition:
- " "Waste Assessment Guidelines" means the guidelines set out in Schedule 2; **[and]";**
- (o) by the insertion after the definition of "Waste Assessment Guidelines" of the following definition:

"water course" means—

- (a) a river or spring;
- (b) a natural channel in which water flows regularly or intermittently;
- (c) a wetland, lake or dam into which, or from which, water flows; and
- (d) any collection of water which the Minister may, by notice in the Gazette, declare to be a water course, and a reference to a water course includes, where relevant, its bed and banks; and".

Amendment of section 7 of Act 24 of 2008

2. Section 7 of the principal Act is hereby amended by the substitution of the following section:

"[Coastal public property consists of—

- (a) coastal waters;**
- (b) land submerged by coastal waters, including-**
 - (i) land flooded by coastal waters which subsequently becomes part of the bed of coastal waters; and**
 - (ii) the substrata beneath such land;**
- (c) any island, whether natural or artificial, within coastal waters, but excluding-**
 - (i) any part of an island that was lawfully alienated before this Act commenced; or**
 - (ii) any part of an artificially created island (other than the seashore of that island) that is proclaimed by the Minister to be excluded from coastal public property;**
- (d) the seashore, but excluding-**
 - (i) any portion of the seashore below the high-water mark which was lawfully alienated before the Sea-Shore Act, 1935 (Act 21 of 1935), took effect or which was lawfully alienated in terms of that Act and which has not subsequently been re-incorporated into the seashore; and**
 - (ii) any portion of a coastal cliff that was lawfully alienated before this Act took effect and is not owned by the State;**
- (e) the seashore of a privately owned island within coastal waters;**
- (f) any admiralty reserve owned by the State;**
- (g) any state-owned land declared under section 8 to be coastal public property; or**
- (h) any natural resources on or in-**
 - (i) any coastal public property of a category mentioned in paragraph (a) to (g);**
 - (ii) the exclusive economic zone, or in or on the continental shelf as contemplated in sections 7 and 8 of the Maritime Zones Act, 1994 (Act 15 of 1994), respectively; or**
 - (iii) any harbour, work or other installation on or in any coastal public property of a category mentioned in paragraphs (a) to (h) that is owned by an organ of state.]**

"(1) Coastal public property consists of—

- (a) coastal waters;
- (b) land submerged by coastal waters, including—
 - (i) land flooded by coastal waters which subsequently becomes part of the bed of coastal waters;
 - (ii) the substrata beneath such land;
 - (iii) artificially created substrata located below the high water mark, including—
 - (aa) the seashore of reclaimed land; and
 - (bb) any part of an immovable structure located below the high water mark;
- (c) any natural island within coastal waters;
- (d) the seashore, including the seashore of a natural or reclaimed island;
- (e) any admiralty reserve owned by the State;
- (f) any state-owned land declared under section 8 to be coastal public property; or
- (g) any natural resources on or in any coastal public property of a category mentioned in paragraphs (a) to (f).

(2) Notwithstanding the provisions of subsection (1), coastal public property does not include—

- (a) reclaimed land above the high water mark; or
- (b) unless inside an admiralty reserve owned by the State, any immovable structure, or part of an immovable structure, including harbour installations and infrastructure, whether located on land or the seabed, that is above the high water mark;
- (c) any portion of the seashore below the high-water mark, which was lawfully alienated before the Sea-Shore Act, 1935 (Act No. 21 of 1935), took effect, or which was lawfully alienated in terms of that Act, and which has not subsequently been re-incorporated into the seashore;
- (d) any part of an island that was lawfully alienated before this Act commenced;
- (e) any portion of a coastal cliff that—
 - (i) was lawfully alienated before this Act took effect; and
 - (ii) is not owned by the state; and
- (f) any natural resources on or in any coastal public property of a category mentioned in paragraphs (1)(a) to (g) that was lawfully alienated before this Act commenced.”.

3. The principal Act is hereby amended by the insertion after section (7) of the following section:

“Reclamation of land from coastal waters

- 7A. (1) No person may reclaim land from coastal waters unless authorised by the Minister.**
- (2) The Minister may, on application, approve the reclamation of land from coastal waters and such authorisation may be subject to any conditions that the Minister may deem necessary.**
 - (3) An application for reclamation must record the purpose for which the land is to be reclaimed.**
 - (4) Unless authorised by the Minister, land reclaimed in terms of subsection (1) may not be —**

- (a) sold, leased or otherwise alienated; or
- (b) utilised other than in accordance with the purpose stated in the original application and conditions of the authorisation;
- (5) Land reclaimed in terms of subsection (1) forms part of state-owned land.

Amendment of section 11 of Act 24 of 2008

- 4. Section 11 of the principal Act is hereby amended by—
 - (a) the substitution for subsection (2) of the following subsection:

"(2) Subject to subsection (3), coastal public property is inalienable and cannot be sold, attached or acquired by prescription and rights over it cannot be acquired by prescription;"
 - (b) the insertion after subsection (2) of the following subsection:

"(3) No person may claim a right to use or exploit any natural resource in any part of, or that is derived from, coastal public property, unless that person is authorised to do so by national legislation."

Amendment of section 13 of Act 24 of 2008

- 5. Section 13 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (3) of the following subsection:

"(3) (a) Subject to paragraphs (b) and (c), [No]no fee may be charged for access to coastal public property without the approval of the Minister.

(b) The Minister may by notice in the Gazette publish maximum fees for access to coastal public property or infrastructure located therein, payable—

 - (i) by persons in general or a category of persons; or
 - (ii) for an activity, activities in general or a category of activities.

(c) Any person may apply to the Minister to charge a fee in excess of the maximum published in terms of subsection (b)."
 - (b) by the substitution for subsection (5) of the following subsection:

"Subsections (3) and (4) do not apply to coastal public property —

 - (a) [that has been leased] for which a coastal authorisation has been issued in terms of section 65; or
 - (b) that is, or forms part of, a protected area, or [the sea that forms part of] a harbour [or proclaimed fishing harbour]."

Amendment of section 14 of Act 24 of 2008

6. Section 14 of the principal Act is hereby amended—
- (a) by the substitution for the introductory paragraph of subsection (4) of the following paragraph:
- “If the high-water mark moves inland of the natural curvilinear boundary or the boundary line established in terms of subsection (1) **[and remains there for at least two years]**, a new boundary line on, or inland of, the high-water mark as determined by natural indications, may be determined in accordance with this section at the initiative of the Surveyor-General or by a request [written agreement referred to in subsection (1)] being lodged with the Surveyor-General by—”;
- (c) by the substitution for the introductory paragraph of subsection (5) of the following paragraph:
- “If the high-water mark moves inland of the boundary line established in terms of subsection (4) of a land unit due to the erosion of the coast, sea-level rise or other causes, **[and remains inland of that boundary line for a period of three years,]** the owner of that land unit—”;
- (c) by the deletion in subsection (6) of the words “when this Act took effect”.
- (d) by the addition of the following subsection:
- “(7) The Minister may by notice in the *Gazette* declared a line relative to the Chart Datum to be the high-water mark.”.

Amendment of section 15 of Act 24 of 2008

7. Section 15 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) No person may construct, maintain or extend a structure, or take other measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for in this Act, the National Environmental Management Act or other specific environmental management Act defined in the National Environmental Management Act.”

Amendment of section 16 of Act 24 of 2008

8. Section 16 of the principal Act is hereby amended—
- (a) by the substitution for the introductory paragraph of subsection (1) of the following paragraph—
- “(1) Subject to subsection (2) and section 26, the coastal protection zone consists of—”;

- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) Any coastal ~~[protection]~~protected area, or part of such area, which is not coastal public property;”;

- (c) by the substitution for paragraphs (f) and (i) of subsection (1) of the following paragraphs:

“(f) any coastal wetland, lake, lagoon, river or dam which is situated wholly or partially in a land unit referred to in paragraph (d) (i) or (e);

(i) any land adjacent to an area referred to in subsections (a) to (h) that would be inundated by a 1:~~50~~100 year flood or storm event.”.

Amendment of section 18 of Act 24 of 2008

9. Section 18 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following:

“(1) Each municipality whose area includes coastal public property must within four years of the commencement of this Act, ~~[make a bylaw that designates]~~, designate strips of land as coastal access land in order to secure public access to that coastal public property.”

- (b) by the insertion after subsection (5) of the following subsections —

“(6) If a municipality fails to designate strips of land as coastal access land in terms of subsection (1) the Minister may designate such access land by notice in the Gazette;

“(7) The Minister may not take any measures under subsection (6) without first consulting the MEC in the relevant province and the municipality and giving the municipality a reasonable opportunity to make representations.”

Amendment of section 19 of Act 24 of 2008

10. Section 19 of the principal Act, 2008 is hereby amended by the substitution for the introductory paragraph of the following paragraph:

“Before designating land as coastal access land or withdrawing such designation, the Minister or a municipality must—”.

Amendment of section 27 of Act 24 of 2008

11. Section 27 of the principal Act is hereby amended by the substitution of the following section:

“~~[(1)]~~ When determining or adjusting the inland coastal boundary of coastal public property, the Minister must take into account—

- (a) the dynamic nature of the shoreline;
 - (b) the need to make appropriate allowance for—
 - (i) the periodic natural movements in the high-water mark; and
 - (ii) the erosion and accretion of the seashore;
 - (c) the importance of ensuring the natural functioning of dynamic coastal processes and of extending the coastal boundaries of coastal public property to include the littoral active zone and sensitive coastal ecosystems, including coastal wetlands;
 - (d) the potential effects of projected rises in sea-level; and
 - (e) any other factor that may be prescribed.
- [(2) The Minister may exclude any area from coastal public property for government purposes, by proclamation.**
- (3) Before excluding any area from coastal public property in terms of subsection (2), the Minister must consult with interested and affected parties in terms of Part 5 of Chapter 6.**
- (4) The Minister may exclude any area from coastal public property for any other purpose with the ratification of Parliament.**
- (5) Land excluded from coastal public property forms part of state owned land.**
- [(6) The Minister may on application approve the reclamation of land subject to conditions. Such reclaimed land shall, unless excluded from coastal public property in terms of subsection (5), form part of coastal public property.]**
- [(7) For purposes of this section, "government purposes" means the exercise of functions by an organ of state that are in the national interest or in the interest of national security but does not include donation, leases of more than 20 years or alienation by that organ of state.]**

Repeal of section 35 of Act 24 of 2008

- 12. Section 35 of the principal Act is hereby repealed.**

- "[(1) The Minister must by notice in the Gazette establish a National Coastal Committee and determine its powers.**
- (2) The Department must provide administrative support to the National Coastal Committee.**
 - (3) The National Coastal Committee must promote integrated coastal management in the Republic and effective co-operative governance by co-ordinating the effective implementation of this Act and of the national coastal management programme, and in particular must-**
 - (a) promote integrated coastal management-**
 - (i) within each sphere of government;**
 - (ii) between different spheres of government; and**
 - (iii) between organs of state and other parties concerned with coastal management;**
 - (b) promote the integration of coastal management concerns and objectives into-**
 - (i) those environmental implementation plans and environmental management plans referred to in Chapter 3 of the National Environmental Management Act to which they are relevant;**

- (ii) national, provincial and municipal development policies, plans and strategies;
- (iii) other plans, programmes and policies of organs of state whose activities may create adverse effects on the coastal environment; and
- (c) perform any function delegated to it.]”

Repeal of section 36 of Act 24 of 2008

13. Section 36 of the principal Act is hereby repealed.

“[(1) The Minister appoints the members of the National Coastal Committee.

(2) (a) The persons to be appointed in terms of subsection (1) must, by virtue of the office that they hold or their expertise, be able to assist the National Coastal Committee in fulfilling its functions.

(b) When appointing persons in terms of subsection (1), the Minister must ensure that the National Coastal Committee includes-

- (i) persons with expertise in fields relevant to coastal management and coastal ecosystems;
- (ii) a representative from each Provincial Coastal Committee;
- (iii) one or more members representing municipalities in the coastal zone;
- (iv) representatives of national government departments which play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment, including representatives of the departments responsible for agriculture, minerals and energy, transport, public works, provincial and local government, land affairs, water affairs and forestry and trade and industry; and
- (v) one or more members representing the management authorities of coastal protected areas.

(3) The Minister may, on the basis of the criteria referred to in subsection (2), appoint-

- (a) an alternate member for any member of the National Coastal Committee; and
- (b) a replacement for any member who vacates his or her office.

(4) The Minister must, with the consent of the Minister of Finance, determine the rate of remuneration and the allowances payable to any member of the National Coastal Committee who is not an employee of an organ of state.]”

Repeal of section 37 of Act 24 of 2008

14. Section 37 of the principal Act is hereby repealed.

- "[(1) A member of the National Coastal Committee vacates office if he or she-**
- (a) becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the National Coastal Committee;**
 - (b) ceases to hold any office necessary for his or her appointment to the National Coastal Committee; or**
 - (c) tenders his or her resignation and a Minister accepts it.**
- (2) The Minister may terminate membership of a member of the National Coastal Committee where-**
- (a) that member fails to perform the duties of a member as required in terms of this Act;**
 - (b) that member obstructs or impedes the National Coastal Committee in the performance of its functions in terms of this Act;**
 - (c) that member brings the National Coastal Committee into disrepute; or**
 - (d) such termination is in the interest of the public.]"**

Amendment of section 38 of Act 24 of 2008

- 15.** Section 38 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:
- "(3) The Premier may assign some of the functions referred to in subsection [(1)] (2) to any organ of state other than the lead agency in the province."**

Amendment of section 39 of Act 24 of 2008

- 16.** Section 39 of the principal Act is hereby amended by the substitution of paragraph (b) of subsection (2) of the following paragraph:
- "(b) advise the MEC[, and the provincial lead agency [and the National Coastal Committee] on matters concerning coastal management in the province."**

Amendment of section 51 of Act 24 of 2008

- 17.** Section 51 of the principal Act is hereby amended by the substitution of the introductory paragraph for the following paragraph:
- "[An environmental implementation or environmental management] Any programme or plan in terms [of Chapter 3] of the National Environmental Management Act, any specific environmental management Act, an integrated development plan in terms of the Municipal Systems Act and a provincial or municipal land development plan must—."**

Amendment of section 56 of Act 24 of 2008

- 18.** Section 56 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(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 ~~[of Transport]~~ responsible for navigation of vessels on the sea or vessels entering or leaving a harbour, if the scheme [—
(i)] affects ~~[the navigation of vessels on the sea;]~~ or
[(ii)] restricts such vessels ~~[entering or leaving a harbour]~~.”;

Amendment of section 59 of Act 24 of 2008

19. Section 59 of the principal Act is hereby amended—
- (a) by the insertion of the words “or MEC” after the word “Minister” whenever they occur:
 - (b) by the substitution for the introductory paragraph of subsection (1) for the following paragraph:

“(1) If the Minister or MEC has reason to believe that a person has 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 coastal environment then, subject to subsection (2) he or she may issue a written coastal protection notice to the person responsible for that activity—”;
 - (c) by the deletion of subsection (3):

[(3) Notwithstanding section 87, the power of the Minister to issue a coastal protection notice in terms of subsection (1) may only be delegated to—
(a) the MEC, who may subdelegate this power to a municipality in that province; or
(b) an official in the Department.];
 - (d) by the substitution for the second (ii) in paragraph (a) of subsection (4), of “(iii)”;
 - (e) by the substitution for the introductory paragraph of subsection (5) for the following paragraph:

“If the Minister or MEC has reason to believe that a person has 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 the person—”;

- (f) by the substitution for subsection (6) of the following subsection:

"(6) When issuing a notice contemplated in subsection (5), subsections (2), [(3)] and (4) apply with the necessary changes."

Amendment of section 60 of Act 24 of 2008

20. Section 60 of the principal Act is hereby amended by the deletion of subsection (3):

[(3) Notwithstanding section 89, the power instead of issuing a notice in accordance with subsection (4) of the Minister to issue a repair and removal notice in terms of subsection (1) may only be delegated to—

- (a) the MEC, who may subdelegate this power to a municipality in that province; or**
(b) an official in the relevant Department.]

Amendment of section 62 of Act 24 of 2008

21. Section 62 of the principal Act is hereby amended by deletion of subsection (2):

[(2) An organ of state may not authorise land within the coastal protection zone to be used for any activity that may have an adverse effect on the coastal environment without first considering an environmental impact assessment report.]

Amendment of section 63 of Act 24 of 2008

22. Section 63 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1)(d) of the following subsection:

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

- (b) by the substitution for subsection (1)(f) of the following subsection:

"(f) the likely impact of coastal environmental processes on the proposed activity; [and]"

- (c) by the substitution for subsection (1)(h) of the following subsections:

"(h) [the objects of this Act, where applicable] whether the development or activity—

- (aa) 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;**

- (bb) 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;
 - (cc) 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;
 - (dd) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
 - (ee) is likely to be significantly damaged or prejudiced by dynamic coastal processes;
 - (ff) would substantially prejudice the achievement of any coastal management objective; and
 - (gg) would be contrary to the interests of the whole community;";
- (d) by the insertion after subsection (1)(h) of the following subsections:
- "(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; and
 - (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
 - (k) the objects of this Act, where applicable.";
- (e) by the deletion of subsection (2), (3) and (4);
- [(2) The competent authority may not issue an environmental authorisation if the development or activity for which authorisation is sought—**
- (a) 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;**
 - (b) 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;**
 - (c) 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;**
 - (d) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;**
 - (e) is likely to be significantly damaged or prejudiced by dynamic coastal processes;**
 - (f) would substantially prejudice the achievement of any coastal management objective: or**

- (g) would be contrary to the interests of the whole community.
- (3) Notwithstanding subsection (2), the competent authority may issue an environmental authorisation in respect of an activity or a development that does not meet the criteria referred to in subsection (2)(a), (b) or (c) if—
 - (a) 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; or
 - (b) 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.
- (4) If an application for an environmental authorisation cannot be approved by the competent authority because of a provision of subsection (2), but the competent authority believes that issuing the authorisation would be in the public interest, the competent authority may refer the application for consideration by the Minister in terms of section 64.].

Repeal of section 64 of Act 24 of 2008

23. Section 64 of the principal Act is hereby repealed.

[64 (1) If an application for an environmental authorisation is referred to the Minister in terms of section 63(4) the Minister may, after consultation with the MEC of the relevant province, issue or authorise the other relevant competent authority to issue the environmental authorisation-

- (a) if the activity for which the environmental authorisation is required is overwhelmingly in the interests of the whole community despite the adverse effect it is likely to cause to the coastal zone; and
 - (b) on condition that any irreversible or long-lasting adverse effects must be mitigated as far as is reasonably possible.
- (2) Before deciding the application, the Minister may require the applicant to furnish additional information, including the results of any further studies undertaken.]

Amendment of heading to Part 4 of Act 24 of 2008

24. The following heading is hereby substituted for the heading to Part 4 of the principal Act:

“Coastal [~~leases and coastal concessions~~] authorisations on coastal public property”

Amendment of heading to section 65 of Act 24 of 2008

25. The heading of section 65 of the principal Act is hereby substituted:

"Award of **[leases and concessions]** coastal authorisations on coastal public property";

Amendment of section 65 of Act 24 of 2008

26. Section 65 of the principal Act is hereby amended by the substitution therefor of the following section:

- (1) **[Subject to sections 67 and 95, no person may occupy any part of, or site on, or construct or erect any building, road, barrier or structure on or in coastal public property except under and in accordance with a coastal lease awarded by the Minister in terms of this Chapter.]** The Minister may by notice in the *Gazette*—
- (a) list activities that
 - (i) are prohibited within coastal public property; or
 - (ii) require a coastal authorisation from the Minister; and
 - (b) set different fees for authorisations in terms of subsection (1)(a)(ii).
Provided that such activities do not required environmental authorisation in terms of Chapter of the National Environmental Management Act.
- (2) **[Subject to section 95, no] No person may— [claim an exclusive right to use or exploit any specific coastal resource in any part of, or that is derived from, coastal public property unless he or she—**
- (a) **is empowered by national legislation to do so; or**
 - (b) **is authorised to do so in terms of—**
 - (i) **a coastal concession awarded by the Minister in terms of this Chapter; or**
 - (ii) **an authorisation issued under the Marine Living Resources Act.]**
 - (a) undertake an activity prohibited in terms of subsection (1)(a)(i) or,
 - (b) undertake an activity referred to in subsection (1)(a)(ii) without a coastal authorisation; or
 - (c) contravene any conditions determined in an authorisation referred to in section 66.
- (3) A coastal **[lease or coastal concession]** authorisation in terms of subsection (1)(a)(ii) may be awarded by the Minister either—
- (a) on application; or
 - (b) if the Minister so determines in any specific case, through a prescribed **[bid]** process.
- (4) An application for a coastal **[lease or coastal concession]** authorisation must be lodged in the prescribed manner.
- (5) A coastal **[lease or coastal concession]** authorisation awarded in terms of this Chapter does not relieve the **[lessee or concessionaire]** holder from the obligation to—
- (a) obtain any other authorisation that may be required in terms of this Act or other legislation; or
 - (b) comply with any other legislation.

Amendment of heading to section 66 of Act 24 of 2008

27. The following heading is hereby substituted for the heading to section 66 of the principal Act:

"Terms of coastal [~~leases and coastal concessions~~] authorisations".

Amendment of section 66 of Act 24 of 2008

28. Section 66(1) of the principal Act is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:
"[(1)] A coastal [~~lease—or coastal concession~~] authorisation—

- (a) **must be awarded for a fixed period of time of not more than [20] 5 years, but may be renewed once for a period of not more than 3 years, whereafter a new application must be made in terms of section 65(1);**
 (b) **is subject to any [~~prescribed~~] conditions [~~or as may be~~] determined by the Minister [~~In any specific case~~]; and**
 (c) **must provide for the payment by the [~~lessee or concessionaire~~] holder of a [~~reasonable rent~~] user charge determined by the Minister in terms of section 65(1)(b).**

[(2) A coastal lease or coastal concession on land that is partially or completely submerged by coastal waters may authorise the lessee to use the water either exclusively or for specified purposes.]"

Amendment of section 69 of Act 24 of 2008

29. Section 69 of the principal Act is hereby amended by the deletion of subsection (11):

"[(11) An organ of state that issues a permit under subsection (1) must report every three years in the prescribed form to the National Coastal Committee on the status of each pipeline that discharges effluent into coastal waters and its impact on the coastal environment.]"

Amendment of section 70 of Act 24 of 2008

30. Section 70(1) of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (e) of subsection (1) of the following paragraphs:

- "(a) incinerate at sea any waste or other material—**
 (i) **within the coastal waters[~~or the exclusive economic zone~~]; or**
 (ii) **aboard a South African vessel;**
(b) import into the Republic any waste or other material to be dumped or incinerated at sea within the coastal waters[~~or the exclusive economic zone~~];

- (e) except on the authority of a dumping permit granted under section 71—
 - (i) dump at sea, any waste within the coastal waters **[or the exclusive economic zone]**; or
 - (ii) dump from a South African vessel, aircraft, platform or other man-made structure at sea, any waste or other material on the high seas; or”;

Amendment of section 71 of Act 24 of 2008

31. Section 71 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (f) of subsection (3) of the following paragraph:
“(f) organic material of natural origin; **[or]**”;
- (b) by the substitution for paragraph (g) of subsection (3) of the following paragraph:
“(g) bulky items primarily comprising iron, steel, concrete and similarly non-harmful material for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping at sea;” or;
- (c) by the insertion after paragraph (g) of subsection (3) of the following paragraphs:
“(h) waste or other material which may be prescribed.”; and
- (d) by the substitution for subsection (5) of the following subsection:
“(5) **“[A dumping permit may be issued] The Minister may issue a dumping permit for a [specified] period of not more than two years [but] and may [be renewed] renew it [once] for a further period of not more than two years, whereafter a new application must be made in terms of subsection (1).”**

Amendment of section 79 of Act 24 of 2008

32. Section 79 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

- "(h) passes, uses, alters or has in possession any altered or false document purporting to be an authorisation; **[or]**"
- (b) by the insertion after paragraph (i) of subsection (1) of the following paragraph:
- "(j) reclaims land from coastal waters without authorisation of the Minister in terms of section 7A(1);
- (k) sells, leases or otherwise alienates reclaimed land in contravention of section 7A(3)(b)(i); or
- (l) utilises reclaimed land in contravention of section 7A(3)(b)(i);
- (m) fails to comply with a verbal directive issued by the Minister in terms of section 92(1)."
- (c) by the insertion after paragraph (c) of subsection (2) of the following paragraphs:
- "(d) constructs, maintains or extends any structure, or takes other measures on coastal public property to prevent or promote erosion or accretion of the seashore in contravention of section 15(2);
- (e) fails to comply with a coastal protection notice or access notice issued in terms of section 59;
- (f) contravenes the provisions of section 65(2)(b);
- or
- (g) contravenes any other provision of this Act which is not referred to in subsection (1), (2) or (3)."
- (d) by the deletion of subsection (4):
- [(4) A person is guilty of a category three offence if that person-**
- (a) fails to comply with a coastal protection notice or access notice issued in terms of section 59; or**
- (b) contravenes any other provision of this Act which is not referred to in subsection (1), (2), or (3).]**

Amendment of section 80 of Act 24 of 2008

33. Section 80 of the principal Act is hereby amended by the substitution for section 80 of the following section:

"(1) A person who is **[guilty]** convicted of a category one offence referred to in section 79(1) may be sentenced to a fine of up to R5 000 000 or to imprisonment for a period of up to ten years, or to both such fine and imprisonment.

(2) A person who is **[guilty]** convicted of a category two offence referred to in section 79(2) may be sentenced on a first conviction for that offence to a fine of up to **[R500 000]** R2 000 000 or to

imprisonment or community service for a period of up to five years, or to both such fine, imprisonment or community service.

[(3) A person who is guilty of a category three offence referred to in section 79(3) [or (4) may be sentenced on a first conviction for that offence to a fine of up to R50 000 or community service for a period of up to six months or to both such fine and community service].

(4) A person who is **[guilty]** convicted of a category two **[or three]** offence may be sentenced on a second or subsequent conviction for that offence as if he or she has committed a category one **[or two]** offence.

(5) A court that sentences any person—

- (a) to community service for an offence in terms of this Act must impose a form of community service which benefits the coastal environment, unless it is not possible to impose such a sentence in the circumstances;
- (b) for any offence in terms of this Act, may suspend, revoke or cancel an authorisation granted to the offender under this Act."

Amendment of section 81 of Act 24 of 2008

34. Section 81 of the principal Act is hereby amended by substitution for section 81 of the following section:

"81. [If a person is charged with the commission of an offence in terms of this Act on, in or above coastal waters, a court whose area of jurisdiction abuts on the coastal waters has jurisdiction in the prosecution of the offence.]

(1) Any act or omission in contravention of any of the provisions of this Act which is committed—

- (a) by any person in, on or above coastal waters;
- (b) outside coastal waters by any citizen of the Republic or any person ordinarily resident in the Republic; or
- (c) by any person on board any local vessel; shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic.

(2) 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."

Amendment of section 89 of Act 24 of 2008

35. Section 89 of the principal Act is hereby amended by—

- (a) the deletion of subsection (3):
[(3) The Minister must give notice in the Gazette of any delegation of a power or duty to an MEC, an organ of state, a statutory functionary, a traditional council or a management authority of a special management area.];

- (b) the substitution for subsection (5) of the following subsection:

“(5) The Minister-

(a) may not delegate a power or duty vested in the Minister-

(i) to make regulations; or

(ii) to publish notices in the *Gazette*; **[or**

(iii) to appoint the members of the National Coastal Committee;] and

(b) may withdraw by notice in writing any delegation made in terms of a provision of this Act or of a statute repealed by this Act.”

Amendment of heading to section 90 of Act 24 of 2008

36. Section 90 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following subsection:

“(d) establish set-back lines **[to implement or monitor compliance with provincial norms and standards.]**”.

Amendment of section 91 of Act 24 of 2008

37. Section 91 of the principal Act is hereby amended by the insertion after paragraph (b) of subsection (1) the following paragraph:

“(1) An MEC may delegate any power or duty assigned or delegated to him or her in terms of this Act to—

(a) the head of the provincial lead agency; **[or]**

(b) any other organ of state, a statutory functionary, a traditional council or a management authority of a special management area, by agreement with that organ of state, statutory functionary, traditional council or management authority; or

(c) an official within the MEC's department.”

Amendment of section 92 of Act 24 of 2008

38. Section 92 of the principal Act is hereby amended by the substitution for paragraph (3) of the following paragraph:

“(3) When issuing a verbal directive contemplated in subsection (1), the provisions of section 59(1), **[(3)]** and (4) or 60(1), **[(3)]** and (4) apply with the necessary changes.”.

Insertion of section 94A of Act 24 of 2008

39. The following section is hereby inserted in the principal Act:

“Exemptions

94A(1) The Minister may in writing exempt any person or group of persons or organ of state from a provision of

this Act if, in the opinion of the Minister, there are sound reasons for doing so.”

- (2) An exemption granted in terms of subsection (1) may—
(a) be subject to conditions;
(b) be subject to payment of a fee; and
(c) be amended or cancelled at any time by the Minister.”.

Amendment of section 95 of Act 24 of 2008

38. The following section is hereby substituted for section 95 of the principal Act:

“Existing leases on, or rights to coastal public property

- [(1) Subject to subsection (3), this Act does not affect the continuation of—**
(a) a lawful lease on coastal public property, including a port or harbour, that existed when this Act took effect; or
(b) a vested right to use or exploit any specific coastal resource on or in coastal public property, including a right to prospect for or mine minerals, or to explore for or exploit petroleum resources that existed when this Act took effect.
- (2) The holder of a lease or right referred to in subsection (1) in terms of the Seashore Act must within 24 months of the commencement of this Act -**
(a) notify the Minister, in writing, of the existence of that lease or right; and
(b) provide the Minister with a copy of any documents evidencing that lease or right.
- (3) A person may undertake any activity authorised by a lease or right referred to in subsection (1) without obtaining a coastal lease or a coastal concession in terms of Chapter 7 for a maximum period of—**
(a) 48 months after the commencement of this Act, if the holder of that lease or right complies with subsection (2); or
(b) 24 months after the commencement of this Act, if the holder of that lease or right does not comply with subsection (2).
- (4) After the end of the period referred to in subsection (3), no person may continue with or carry out an activity that was permitted under that lease or right except in terms of a coastal lease or a coastal concession awarded to that person in terms of Chapter 7.**
- (5) An application by a person contemplated in subsection (4) for a coastal lease or a coastal concession —**
(a) must—
(i) be considered taking into account the existing lease or right and any losses or hardships the applicant and other persons may suffer; and

- (ii) be decided within six months from the date the application was lodged;
- (b) may be refused if—
 - (i) the activity applied for would have or is likely to have serious adverse effects on the coastal environment; or
 - (ii) the Minister has reason to believe that granting the application would be inconsistent with the objects of the Act or would prejudice the attainment of a coastal management objective.]

- “(1) A lease or right under the Seashore Act shall lapse upon commencement of this section and section 98.
- “(2) A person may, after the commencement of this Act, undertake any activity previously authorised by a lease in terms of the Seashore Act unless the activity is regulated in terms of section 65(2).
- “(3) Notwithstanding the provisions of subsection (1), the holder of a lease or right in terms of the Seashore Act must within 24 months of the commencement of this section provide the Minister with a copy of the lease concluded in terms of the Seashore Act.”.

Repeal of section 97 of Act 24 of 2008

39. Section 97 of the principal Act is hereby repealed.

“[97.(1) For a period of 24 months after the commencement of this Act, any person who, when this Act commenced, was lawfully engaged in—

- (a) carrying out, in the coastal zone, an activity requiring an environmental authorisation;
- (b) abstracting water from coastal waters, must be regarded to be the holder of an environmental authorisation that authorises that activity.

(2) Any person referred to in subsection (1) who within 24 months of the commencement of this Act applies for an environmental authorisation that will authorise the continuation of the activity referred to in subsection (1), shall continue to be regarded as the holder of the authorisation until the competent authority decides whether to grant or refuse the application.

(3) This section does not affect—

- (a) the powers of an issuing authority under section 68 to amend, revoke, suspend or cancel an authorisation; or
- (b) any obligation which a person referred to in subsection (1) may have under section 96(2).]”

Insertion of section 97A in Act 24 of 2008

40. The following section is hereby inserted in the principal Act:

"97A Any exclusion from coastal public property in terms of section 27, prior to the repeal of that section, shall be of no force and effect and such coastal public property shall revert to the legal status it had prior to such exclusion ."

Commencement

41. This Act takes effect on a date determined by the President by proclamation in the *Gazette*
