

THE INTEGRATED COASTAL MANAGEMENT BILL

A brief guide to assist the public participation
process



environment & tourism

Department:
Environmental Affairs and Tourism
REPUBLIC OF SOUTH AFRICA



INTRODUCTION

Parliament requires the publication for public comment of Bills in the Government Gazette before such Bills are introduced in Parliament for the purpose of promulgating them as legally binding Acts. This is in line with the Constitutional imperatives that government ensures accountability, responsiveness and openness.

During the first week of December 2006 the Cabinet approved the publication in the Government Gazette of the Integrated Coastal Management Bill for public comment. In a press release issued on 8 December 2006, Marthinus Van Schalkwyk, the Minister of Environmental Affairs & Tourism, announced that the Bill would be gazetted on 15 December 2006. The Minister pointed out that due to its complexity the Bill would be available for public comment for a period of 90 days. The text of the Bill is available from the Government Printer (Tel: 012-334 4511 or 021-465 7531) or can be downloaded from <http://www.deat.gov.za/>.

The purpose of this Guide is to facilitate meaningful and informed public participation during the 90 day comments period. The Guide seeks to achieve this by first explaining the historical context leading to the publication in 2000 of *the White Paper for Sustainable Coastal Development in South Africa* (referred to below as “the White Paper”) which provided a national policy for managing our coastline. This Guide then briefly explains the purpose of each chapter of the Bill and provides an outline of its content.

When the Bill becomes an Act of Parliament South Africa will for the first time have a national Coastal Management Act in place for managing our coastal zone, a priceless national asset. The publication of the Bill for comment therefore represents a historical opportunity for coastal stakeholders, interested and affected parties and members of the general public to help shape the content of the proposed Integrated Coastal Management Act.

WHY IS THERE A NEED FOR A NATIONAL COASTAL MANAGEMENT ACT?

The questions are often raised – why is there a need for dedicated coastal management legislation – is the coast not simply part of the general environment and is it not already covered by existing environmental legislation? Answers to these questions are discussed below.

The coast is a unique part of the environment. It is the meeting place of the land and sea – a limited spatial area that supports many human activities. The coast is a distinctive system in which a range of considerations – biophysical, economic, social and institutional – interconnect, in a manner which requires a dedicated and integrated management approach. The coast needs to be managed as a system

in order to make optimal use of the opportunities and benefits it provides. However, this system – orientated approach has failed to materialize to date and various sectors of government continue to adopt a management approach focusing on their specific sectors such as land-use planning, agriculture, water affairs, nature conservation and others. This Bill promotes a holistic way of thinking by **promoting co-ordinated and integrated coastal management**, which views the coast as a system and emphasizes the importance of managing it as such.

In the past, the value of coastal ecosystems as a cornerstone for development was not sufficiently acknowledged in decision-making in South Africa. The White Paper highlights the importance of **recognising the value of the coast**. The value of the direct benefits obtained from coastal “goods and services” was estimated in 1998 to be about R168 billion annually, which was equivalent to about 35% of our annual Gross Domestic Product. Much of the wealth locked up in our coast continues to be wasted due to environmentally insensitive development and activities. Economic and social opportunities for wealth creation and equity are being missed and coastal ecosystems are being degraded.



Photo: DEAT



Photo: CSIR Natural Resources and the Environment

How we manage our coastal areas will determine whether they remain valuable assets or become degraded liabilities.

The White Paper also emphasizes the importance of facilitating coastal development which is sustainable. **This requires development to be ecologically, socially and economically sustainable.** For coastal development to be ecologically sustainable, it should involve protection of coastal ecosystems and sustainable use of marine and coastal resources. For coastal development to be socially sustainable, it should emphasise public awareness and shared responsibility, empowering disadvantaged individuals and communities, including women and the poor. For coastal development to be economically sustainable it should diversify opportunities, provide jobs and facilitate access to productive resources.

The White Paper did not merely provide a vision, principles, goals

and objectives for coastal management in South Africa. It took a step further by providing a *Plan of Action* which outlines in detail how the White Paper is to be implemented. One of the elements of this *Plan of Action* is *Institutional and Legal Development*. After the Cabinet approved the White Paper a comprehensive legal review was carried out. Its purpose was to determine whether the White Paper could be implemented in terms of existing laws. The review concluded that a dedicated Coastal Management Act was required for implementing the White Paper.

THE CONTENTS OF THE BILL

Preamble

The preamble explains the rationale or basis for promulgating the proposed Integrated Coastal Management Act. Several factors forming part of this basis are discussed above.

Chapter 1: Interpretation, objectives and application of act

This chapter defines important words and terms, sets out the objectives of the proposed Act in order to guide the interpretation and application of the Act, clarifies the role of the State in relation to the coastal environment, indicates to whom and where the Act applies and explains that the Act must be read in conjunction with the National Environmental Management Act and explains how to reconcile conflicts with other legislation.

Chapter 2: The coastal zone

The Bill focuses on regulating human activities within, or that affect the “coastal zone”. The **coastal zone** is illustrated in Figure 1 and defined (see Chapter 1) as the area comprising **coastal public property**, the **coastal buffer zone** (an area along the edge of coastal public property), **coastal access land** (which the public may use to gain access to coastal public property), specially protected coastal areas, and includes any aspect of the environment on, in and above them.

At the heart of the coastal zone is an area of land and water defined as **coastal public property**, which is the common property of the people of South Africa (section 7). This contrasts with the current situation under the Sea-shore Act where the seashore and sea are owned by the President on behalf of the people. Coastal public property is made up primarily of the “seashore” (between the low and high water marks) and “coastal waters”. “**Coastal waters**” are essentially all waters influenced by tides (whether in estuaries, harbours, rivers etc.) and the sea out to the limits of the territorial sea (12 nautical miles).

In order to protect and effectively regulate coastal public property, it is also necessary to impose controls and restrictions on certain areas adjacent to coastal public property that form part of coastal ecosystems. Restricting or controlling developments in these areas is also essential to take account of the dynamic nature of the coast

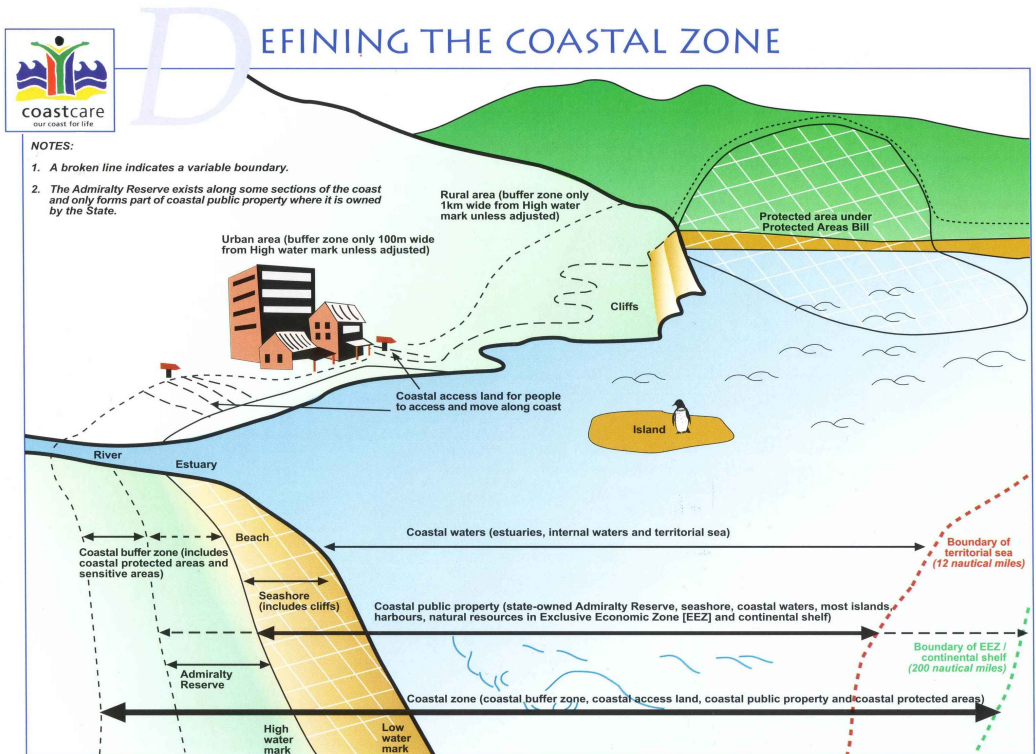


Fig. 1. Defining the Coastal Zone.

and to protect people and property from harm from natural causes such as coastline erosion and flooding, or new threats like sea level rise as a consequence of global warming. The Bill addresses this by creating a **coastal buffer zone** inland of coastal public property (section 16). The Bill provides that initially the coastal buffer zone would extend one hundred metres inland from the boundary of coastal public property (usually the high-water mark) in areas that have already been zoned for residential, commercial, industrial or multiple-use purposes, and one kilometre inland in other areas. However, since these dimensions are relatively arbitrary and do not take account of the very varied situations along the coast, section 28 sets out procedures whereby the various coastal areas may be specifically demarcated on a case-by-case basis. For example, in developed areas where the coastal environment has been highly modified, such as Durban's beach-front and Sea Point in Cape Town, the width of the coastal buffer zone could be reduced to less than 100 metres. In other instances such as estuaries where tidal influence extends further inland than

1 km or where dune fields extend further than 1 km inland of the high water mark the width of the coastal buffer zone could be extended beyond 1 km.



Coastal access land will secure public access to coastal public property.

In order to secure public access to coastal public property, the Bill requires municipalities to designate **coastal access land** (see section 18). Certain land will be regarded as coastal access land when the Bill is enacted (becomes law) but the designation of coastal access land may also be withdrawn or “cancelled”. Reasons

for withdrawing such designation could include instances where the use of coastal access land is causing damage to the environment. The process for designating or withdrawing the designation of coastal access land is described in section 19. The responsibilities of municipalities with regard to coastal access land are described in section 20. In the past infrastructure for access to the sea was often developed without sufficient consideration of environmental factors. This resulted, for example, in car-parks being located in dynamic dune areas characterized by drift-sand movement or in areas subject to serious erosion during storm seas. The responsibilities of municipalities with regard to coastal access land therefore include consideration of environmental factors.

Early drafts of the Integrated Coastal Management Bill included detailed provisions dealing with **coastal protected areas** (see section 22). However, it was decided that coastal protected areas would generally be managed under the Protected Areas Act (Act No. 57 of 2003) rather than the proposed Integrated Coastal Management Act. Protected areas or parts thereof are automatically included in the buffer zone in terms of Section 16 (1) (c). The purpose of section 22 is to enable the MEC (member of the Executive Council of a coastal province who is responsible for environmental and coastal management in the province) to declare that protected areas or parts thereof are not part of the buffer zone. The reason for this is that some protected areas extend sufficiently far inland so as to make it logical to exclude them from the scope of the proposed Act.

Section 23 provides that **special management areas** may be declared and section 24 deals with the management of such areas. This is intended to provide a mechanism

for establishing special management arrangements in a particular area in order to give effect to the recognition in the White Paper that the diversity of the coast requires different management approaches in different areas. A special management area could be declared for various coastal management purposes, and it is envisaged that these would be established mainly to encourage sustainable development in particular areas, rather than as conservation areas (which in most cases will be dealt with as protected areas). For example, special management areas could be declared to ensure the sustainable harvesting of shellfish for subsistence purposes in areas where such harvesting is presently depleting the shellfish resources.

Section 25 authorises MEC's to establish **coastal set-back lines**. Once such a line has been established in a zoning scheme, any person who wishes to erect or alter a structure situated seaward of the line must obtain permission before doing so. A coastal set-back line may, for example, be established to ensure that the shadows from high buildings do not fall on the beach or in order to take into account possible effects of sea level rise.

Chapter 3: Boundaries of coastal areas

This chapter provides procedures for demarcating and adjusting the boundaries of coastal public property, the coastal buffer zone, special management areas and coastal access land (sections 26-29). It also sets out the considerations which must apply in respect of such demarcations and adjustments. Interested and affected parties have an opportunity to contribute to the process of demarcating or adjusting boundaries. The purpose of sections 31 and 32 is to provide for the formalizing in law of such determinations and adjustments through the **marking of boundaries on zoning maps** and **endorsements by the Registrar of Deeds** (sections 31 and 32).

Demarcation procedures to change the boundaries of the coastal buffer zone are only likely to be instituted where the area designated by the Act (either 1km or 100 metres inland from the boundary of coastal public property, depending on the area) is inappropriate and impedes effective coastal management.



Photo: DEAT

A chapter of the Bill focuses on estuaries which are much sought after for recreation

Chapter 4: Estuaries

This chapter aims to facilitate the efficient and coordinated management of all estuaries by providing that they must be managed, in accordance with: (a) a **National Estuarine**

Management Protocol (see section 33) approved by the Ministers responsible for the environment and for water affairs; and (b) **estuarine management plans** for individual estuaries (see section 34). The protocol will provide a national policy for estuary management and guide the development of individual estuarine management plans.

Chapter 5: Institutional arrangements

The White Paper recommended new arrangements to coordinate coastal management in South Africa. This chapter establishes a statutory framework for new institutional arrangements to ensure integrated and coordinated coastal management. Section 35 establishes a **National Coastal Committee** which will function at national government level. Section 36 authorizes the Minister to determine the composition of the Committee.

Section 37 provides for the **designation and functions of provincial lead agencies** which will play the lead role in coastal management at provincial government level. Section 38 provides for the establishment of **Provincial Coastal Committees** which will be responsible for coordinating coastal management in each province. Section 39 authorizes the MEC's of each province to determine the composition of these Committees.

Section 40 authorizes the MEC's to appoint **Voluntary coastal officers** and define their roles and responsibilities. This provision helps facilitate a new co-operative and participatory approach to managing the coast (see Preamble to Bill) by enhancing the participation of members of the public in coastal management.

Chapter 6: Coastal management

This chapter establishes new management and planning procedures for coastal resources to ensure that development is sustainable, integrated and in the interest of all user groups. It sets out the legal mechanisms for establishing a proactive planning system for coastal areas that integrates coastal concerns (including the marine dimension) into the existing provincial and municipal land-based and economic development planning procedures in a manner that is consistent with the policy goals of the White Paper. The current land-use planning system in South Africa is a land-based system that essentially stops at the high water mark. This Chapter is designed to extend that system across the land/sea interface in order to allow for integrated coastal planning and the proactive control of the use of coastal resources.

The Chapter establishes a hierarchy of **coastal management programmes** (CMP's – see Figure 2). At the top of the hierarchy is the **national CMP** which the Minister must prepare and adopt within six years of the commencement of the National Coastal Management Act (sections 41-42). Section 103 requires the White Paper of April 2000 to be regarded as the national coastal management programme until

COASTAL MANAGEMENT PROGRAMMES

White Paper is regarded as first NCMP

**NATIONAL
COASTAL MANAGEMENT PROGRAMME**

1. Sets national coastal management policy and strategy.
2. Includes: vision, national coastal management objectives (CMO's).



**PROVINCIAL COASTAL
MANAGEMENT PROGRAMMES**

1. Sets provincial coastal management policy and strategy consistent with national CMP.
2. Includes: vision, provincial CMOs.



**MUNICIPAL COASTAL
MANAGEMENT PROGRAMMES**

1. Sets local policy, strategy & CMOs.
2. May be part of IDP.
3. May enact by-laws to give effect to municipal CMP.

Fig. 2. Coastal Management Programmes

a national coastal management programme has been adopted in accordance with section 41. The coastal provinces must develop their own **provincial CMP's** within four years of the commencement of the Act that are consistent with the national CMP and the National Estuarine Management Protocol (sections 44-45). The Act also requires municipalities to develop **municipal CMP's** within four years of the Act's commencement, either as stand alone documents or as part of an integrated development plan (IDP) prepared in accordance with the Municipal Systems Act (sections 46-47). These national, provincial and municipal CMP's must include a vision for the management of the coastal zone they cover, set coastal management objectives (CMO's) and include priorities and strategies for achieving these and performance indicators that can be used to measure progress.

Section 49 **requires the alignment of certain plans with CMP's** to ensure coordinated coastal management. Similarly section 50 requires **consistency between CMP's and other statutory plans**. In practice this means, for example, that the Minister must ensure that there is consistency between the national coastal management plan and other national plans.

Procedures relating to **public participation** in respect of decision-making in accordance with the proposed Act are set out in sections 51-52.

The powers of the Minister and the MEC's to **review** provincial and municipal CMP's respectively are set out in sections 53-54.

Section 55 gives the various authorities responsible for coastal management (including marine areas) the power to establish **zoning schemes**. Section 56 requires land use schemes prepared under other legislation to be consistent with coastal zoning schemes.

The coastal resource use planning system established by this Chapter will function as a mechanism for controlling the use of the coastal zone in the same way as the land use planning system is presently used. Importantly, it will provide a mechanism for translating the results of research regarding how coastal resources should be used and the maximum use that should be made of coastal resources, into a legally enforceable system for managing the coastal zone.

Chapter 7 Protection of Coastal Resources

This chapter provides measures for protecting the coastal environment from activities that may detrimentally affect it and creates procedures for assessing and regulating such activities. Section 57 requires users of coastal public property, owners and occupiers of land, coastal managers and other responsible persons to take reasonable measures to **avoid causing adverse effects on the coastal environment** in accordance with section 28 of the National Environmental Management Act (Act No. 107 of 1998), referred to below as NEMA. Section 58 stipulates the requirements which apply to the **authorisation of activities causing adverse effects**. Section 59 provides for the Minister or MEC to issue written notices requiring measures to be taken to protect the coastal environment (**Measures to stop or mitigate adverse effects**). Section 60 authorises the Minister or MEC to issue notices for the **repair or removal of structures within the coastal zone**.

Part 2 (sections 62 – 64) prohibits potentially harmful activities from taking place within the **coastal buffer zone** unless they have been specifically authorised and requires permits to be obtained before undertaking specified activities within this zone (see also Schedule 3 on p. 102). The authorisation of activities is subject to the consideration of an environmental impact assessment. The Bill does not seek to introduce new environmental impact assessment procedures. Assessing the environmental impact of activities which may detrimentally affect the coastal zone will be done in terms of the general environmental impact assessment regulations which were promulgated in terms of NEMA on 21 April 2006.

Part 3 (sections 65 – 66) prohibits the undertaking of certain activities within **coastal public property and the exclusive economic zone** without a permit (see also Schedule 3 on p. 102). A permit is also required in order to undertake certain non-consumptive, commercial uses of coastal public property or the exclusive economic zone ("**controlled commercial activities**") in order to provide a mechanism for



Photo: eThekweni Municipality

Sea-front development needs to be located behind the littoral active zone - a hazardous area for development.

the control of activities such as off-shore tourism. As in the case of the coastal buffer zone, the issuing of permits is subject to environmental impact assessment. This Part also provides strict guidelines for decision-making which the permit issuing authority must consider.

Section 68 is intended to facilitate the progressive development of an integrated and efficient procedure for granting permits for the use of coastal resources while maintaining a high level of environmental protection. This is achieved by providing that a single integrated coastal resource permit may be issued jointly by several organs of State instead of many separate authorisations.

Part 4 (sections 70-71) deals with the letting of coastal public property by way of coastal leases and the granting of limited use rights over coastal public property by way of coastal concessions.

Part 5 (sections 72-73) contains **general provisions** relating to the **temporary occupation of land within the coastal zone** for specified purposes and the **amendment, suspension or cancellation of authorisations**. Such amendment,

suspension or cancellation is subject to the criteria specified in section 73.

Chapter 8: Marine and coastal pollution control

This chapter establishes integrated procedures for regulating the disposal of effluent and waste into estuaries and the sea. Presently the disposal of effluent through pipelines and the dumping of waste from vessels into estuaries or the sea are controlled under different pieces of legislation by different Departments. The Bill intends to regulate the **discharge of effluent into coastal waters** from any source on land (section 74) by requiring permits to authorise such discharges. The Bill also establishes a **prohibition of incineration or dumping at sea** (section 75) of waste or other material. This prohibition prohibits incineration at sea and restricts dumping at sea in accordance with South Africa's obligations under international law. The Bill provides procedures relating to both discharge and dumping permits (see also Schedule 2 on p. 97).

The Bill authorises the Minister to dispense with prescribed procedure in respect of dumping in **emergencies** (section 77). For example, vessels in distress due to mechanical failure may need to urgently dump cargo overboard. The Bill requires the Minister to develop a **national action list** to screen waste and other material on the basis of their potential effect on human health and the marine environment (section 78).

Chapter 9: Appeals

This chapter sets out the procedures to be followed when appealing against coastal protection or repair and removal notices or in connection with the granting or refusal of a permit under the Act (section 79). It empowers the Minister or MEC either to consider the appeal personally or to appoint an **appeal panel** to determine the appeal (section 80). The purpose of a panel is to ensure that the consideration of an appeal is informed by technical expertise where this is required. Pending the determination of an appeal, the Minister or MEC may make an **interim order** considered necessary to achieve the purposes of the Act (section 81).

Chapter 10: Enforcement

This chapter establishes certain **offences** (section 84), determines **penalties** in respect of offences (section 85), provides for offences under the Act to be prosecuted in the magistrate's court (section 86) and gives the Minister, an MEC or a municipality the power to institute legal proceedings or take other measures in relation to coastal public property or the coastal environment (section 87).

Chapter 11: General Ministerial powers and duties

This chapter sets out the powers and responsibilities of the Minister and the MEC's.

Part 1 deals with the powers of the Minister and of MEC's to make regulations to promote the Act's implementation and prescribes the consultative process that is to be followed when making regulations. **Part 2** describes the **powers to be exercised by the Minister and MEC**. Section 92 grants the Minister the power to exercise certain functions normally exercised by the MEC if specific circumstances apply. Section 93 authorises the MEC to issue directives to municipalities.

Part 3 deals with **delegations**. Section 94 deals with delegations of powers or duties by the Minister. Section 95 authorises the Minister to exercise certain duties and powers normally exercised by the MEC under certain circumstances. Section 96 deals with the MEC's powers to delegate powers or duties assigned to the MEC.

Part 4 deals with certain **General matters**. Section 97 deals with **Information and reporting on coastal matters**. The Minister must make certain information concerning the protection and management of the coastal zone available to the public. The responsibilities of the Minister and MEC's to prepare reports on the state of the coastal environment are also set out. Section 98 requires the **co-ordination of actions between provinces and municipalities**.

Chapter 12 Miscellaneous Matters

This chapter deals with a variety of matters in order to facilitate a smooth transition from the previous management system to the one proposed by the Bill. These include provisions dealing with the continuation of **existing leases on, or rights to, coastal public property** (section 99), the procedures for dealing with **unlawful structures on coastal public property** (section 100), and the continuation of **existing lawful activities in the coastal buffer zone** that were lawful before the commencement of the Act but that after its commencement may only be conducted with a permit (section 101). It also deals with other matters such as the **repeal and amendment** of other laws (section 102). One of the benefits of the proposed Act is that it will replace three existing Acts completely (the Sea-shore Act, 1935, the Lake Areas Development Act, 1975 and the Control of Dumping at Sea Act, 1980) and will repeal provisions in the Nature Conservation Act, 1987 of the former Ciskei and the Environmental Conservation Decree, 1992 of the former Transkei.

COSTS AND BENEFITS

The implementation of the Act will involve some additional costs to organs of State within the national, provincial and local spheres of government. These will be primarily related to the new function of preparing comprehensive coastal management programmes (i.e. proactive coastal resource use planning and management). However these costs should be dwarfed by the benefits derived from improved allocation of coastal resources and streamlined management systems.

IF ENACTED WILL THE BILL PROVIDE AN ADEQUATE NEW INTEGRATED COASTAL MANAGEMENT ACT? SOME QUESTIONS TO CONSIDER WHEN SUBMITTING COMMENTS

Does the Bill:

- support the new holistic coordinated and integrated coastal management (“ICM”) approach that is central to the White Paper?
- ensure that our coast will remain a valuable national asset?
- enhance the ability of each sphere of government to perform their existing coastal management functions and facilitate the further assignment of coastal management responsibilities where appropriate?
- avoid or minimise the establishment of new institutions as recommended by the White Paper?
- facilitate the establishment of a range of public/private and other partnerships for the management of areas of the coastal zone based on the recognition that the great diversity of coastal land forms and circumstances that exist along our coast require correspondingly diverse management systems?
- provide a legal basis for applying the principles and achieving the goals and objectives set out in the White Paper?
- enable the development of national, provincial and municipal coastal planning systems to regulate the development and use of the coast?
- ensure the protection of our coast’s historical, cultural and ecological integrity?
- adjust public and private rights to own and use the coast to ensure that they do not conflict with the implementation of the policy in the White Paper?
- promote equitable access to opportunities and benefits arising from the use of the coast?
- enhance public rights to use the seashore and balance these with corresponding duties?
- provide for the use of economic instruments, as recommended in the White Paper, to support the achievement of the policy objectives?

- generally or specifically give adequate legal effect to the policy in the White Paper?

It is also important to be aware of the fact that this draft legislation has been prepared in the context of a wider environmental law reform programme being undertaken by the Department of Environmental Affairs and Tourism. One of the objectives of the environmental law reform process is to establish an integrated and internally consistent system of environmental laws for South Africa. Accordingly, the Act has been drafted in a manner that will enable it to be implemented in conjunction with other environmental and land-use planning legislation.

RECOMMENDED READINGS

1. COUNCIL FOR THE ENVIRONMENT. 1989. *A Policy for Coastal Zone Management in the Republic of South Africa. Part 1. Principles and Objectives*. Joan Lötter Publications, Pretoria.
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3. DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM. 1998. *Coastal Policy Green Paper: Towards Sustainable Coastal Development in South Africa*. Wynland Printers.
4. DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM. 2000. *White Paper for Sustainable Coastal Development in South Africa*. Printed for the Government Printer by Formaset Printers, Cape.
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7. GLAZEWSKI, J. 1997. *Towards a Coastal Zone Management Act for South Africa. The South African Journal of Environmental Law and Policy* 4(1):1-22.
8. SOWMAN, M. R. 1993. *The status of Coastal Management in South Africa. Coastal Management* 21:163-184.

The above publications are available on the following websites:

www.deat.gov.za
www.mcm-deat.gov.za



Photo: DEAT

Written comments on the Integrated Coastal Management Bill may be addressed to:

The Assistant Director: Institutional and Legal Development
Chief Directorate: Integrated Coastal Management
Department of Environmental Affairs and Tourism
Private Bag X2
Roggebaai 8012

Fax: 021 402 3009

E-mail: czm@deat.gov.za



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Department:
Environmental Affairs and Tourism
REPUBLIC OF SOUTH AFRICA

