

# National Environmental Management: Integrated Coastal Management Act 24 of 2008 (Integrated Coastal Management Act)

Topic: Environmental and Coastal Waters

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## IN A CALABASH

### Introduction

The National Environmental Management: Integrated Coastal Management Act 24 of 2008 (Integrated Coastal Management Act) seeks to ensure that coastal and sea areas and their related ecosystems are not endangered, ruined, or polluted. It has replaced the Dumping at Sea Control Act 73 of 1980.

### Objectives of the Act

The Integrated Coastal Management Act aims to—

- conserve and prevent the degradation of South Africa's coastal environment and estuaries;
  - manage our coastline in an integrated fashion to ensure the sustainable use of the coast's natural resources; and
  - secure equitable access to the opportunities and benefits of coastal public property.
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### Application of the Act and its implication to Tourism

The Act applies to all persons residing and operating in South Africa who use coastal areas and waters, particularly—

- a user of coastal property;
  - the owner, occupier or person in control of land or premises situated on or near any coastal property;
  - the owner or person in charge of a vessel, aircraft, platform or structure at sea, or the owner or driver of a vehicle, which is used on, in or near any coastal property;
  - the operator of a pipeline that ends in the coastal zone; or
  - any person who produced or discharged a substance which caused, is causing or is likely to cause, an adverse effect on such coastal property.
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## **Summary of the provisions of the Act**

### **Composition of coastal property**

The Integrated Coastal Management Act seeks to address coastal property, which will include—

- coastal waters;
- land submerged by coastal waters;
- any island, whether natural or artificial, within coastal waters;
- the seashore;
- the seashore of a privately owned island;
- any admiralty reserve owned by the State;
- any state-owned land declared to be coastal public property;
- any natural resources on or in any coastal public property, the exclusive economic zone or in or on the continental shelf; or
- any harbour, work or other installation on or in any coastal public property that is owned by an organ of state.

### **Ownership of coastal public property**

In terms of the Integrated Coastal Management Act, the ownership of coastal public property vests in the citizens of the Republic, and coastal public property must be held in trust by the State on behalf of the citizens of the Republic.

### **State public trustee of coastal public property**

The Integrated Coastal Management Act vests responsibility for the care and maintenance of the coastal public property with the State.

In this regard, the State must ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community and take whatever reasonable legislative and other measures it considers necessary to conserve and protect coastal public property for the benefit of present and future generations.

### **Access to coastal public property**

While ownership in coastal public property vests in the State, any natural person in South Africa has a right to access, use and enjoy coastal public property, provided this is reasonable and does not adversely affect the rights of other members of the public to use and enjoy the coastal public property.

Notwithstanding the right to use this land, the government has the right to impose prohibitions or restrictions on access to or use of any part of this property in order to—

- protect and preserve a protected area;
- protect the environment, including biodiversity;
- protect the interests of the whole community;
- protect the interests of national security; or
- protect the national interest.

No one may levy a fee in respect of any access to coastal public property without the approval of the Minister, who will require a public participation process before granting approval, allowing interested and affected parties to make representations.



Note: The right to access and use coastal public property will not apply to any land that has been leased or land that is, or forms part of, a protected area or the sea that forms part of a harbour or a proclaimed fishing harbour.

### **Measures affecting erosion**

When a person, owner or occupier of land which is situated adjacent to the seashore or other coastal public property notes that such land is susceptible to or capable of erosion, such person may demand that any organ of state takes measures to prevent the erosion if the erosion is caused by an intentional act or omission of that organ of state or other person.

No person may construct, maintain or extend any structure, or take other measures on coastal public property to prevent or promote erosion of the seashore except with the permission of the state.

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

The Minister or MEC may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure has an adverse effect on the coastal environment or has been erected, constructed or upgraded in contravention of the Act or any other law.

### **Award of leases and concessions on coastal public property**

Very importantly, the reader must note that no person may occupy any part of or construct or erect any building, road, barrier or structure on or in any area of a coastal public property except under and in accordance with a coastal lease awarded by the Minister.

No person may claim an exclusive right to use or exploit any specific coastal resource in any part of coastal public property unless he or she is empowered by national legislation to do so, authorised to do so in terms of a coastal concession awarded by the Minister or has been issued with an authorisation issued under the Marine Living Resources Act 18 of 1998.

A coastal lease or coastal concession may be awarded by the Minister either on application by a person or if the Minister so determines in any specific case, through a prescribed bid process. Any such application for a coastal lease or coastal concession must be lodged in the prescribed manner.

When any coastal lease or coastal concession is awarded, it will not relieve the lessee or concessionaire from the obligation to obtain any other authorisation that may be required in terms of the Act or other legislation or comply with any other legislation.

A coastal lease or coastal concession must be awarded for a fixed period of time of not more than 20 years, is subject to any prescribed conditions and must provide for the payment by the lessee or concessionaire of a reasonable rent.

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.

## Existing leases on, or rights to, coastal public property



The Act does not affect the continuation of any lawful lease on coastal public property, including a port or harbour, that existed when the Act took effect or 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 the Act took effect.

However, the holder of such a lease or right must, within 24 months of the commencement of the Act, notify the Minister in writing of the existence of that lease or right and provide the Minister with a copy of any documents evidencing that lease or right.

Furthermore, a person may undertake any activity authorised by a lease or right without obtaining a coastal lease or a coastal concession as provided for under the Act, for a maximum period of—

- 48 months after the commencement of the Act, if the holder of that lease or right complies with the above notification requirements; and
- 24 months after the commencement of the Act, if the holder of that lease or right does not comply with the above notification requirements.

After the end of these periods, no person may thereafter 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 the Act.



Any application by a person for a coastal lease or coastal concession must be considered, taking into account the existing lease or right and any losses or hardships the applicant and other persons may suffer. It must be decided within six months from the date the application was lodged.

The application may be refused if—

- the activity applied for would have or is likely to have serious adverse effects on the coastal environment; or
- 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.

## Discharge of effluent into coastal waters

The Act, provides that no one may discharge effluent that originates from a source on land into coastal waters except in terms of a General Authorisation granted under the National Water Act 36 of 1998 or a coastal waters discharge permit issued by the Minister after consultation with the Minister responsible for water affairs in instances of discharge of effluent into an estuary.

### **Prohibition of incineration or dumping at sea**

No person may import into South Africa, incinerate or dump any waste on or near a coastal area or within the coastal waters or the exclusive economic zone, except with the written permission of the state.

### **Unlawful structures on coastal public property**

Subject to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, a person who had unlawfully constructed a building or other structure on coastal public property before this Act took effect or who occupied a building or other structure unlawfully built on coastal public property when this Act took effect must, within 12 months of the commencement of the Act, either apply for a coastal lease or demolish the building or structure and restore the site to its previous condition.

If a person applies for a coastal lease and the application is refused by the Minister, he or she must demolish the building or structure and, within a reasonable period determined by the Minister when refusing the application, restore the site to its previous condition.

### **Urgent action by Minister**

The Minister may issue a verbal directive to any responsible person to stay in an activity if such activity poses an immediate risk of serious danger to the public or property or an immediate risk of serious damage or potentially significant detriment to the environment.

A verbal directive must be confirmed in writing within seven days.



#### **WHAT HAPPENS IF YOU DO NOT COMPLY?**

Any person who fails to comply with the provisions of the Act will be guilty of an offence and liable to a fine of between R50 000 and R5million or imprisonment of between 6 months and 5 years.



### **RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT**

- Access, use and enjoyment of coastal public property to be reasonable and not adversely affect the rights of other members of the public;
- Apply for authorisation to construct, maintain or extend any structure or take other measures on coastal public property and conduct an environmental impact assessment;
- All persons to ensure they do not damage any coastal property and comply with the requirements of the National Environmental Management Act 107 of 1998 with regard to any incident which has occurred and which may have an adverse effect on that coastal environment;
- Permission to occupy coastal property;
- No person to occupy or construct or erect any building, road, barrier or structure on or in any area of a coastal public property without a coastal lease awarded by the Minister;
- No one may discharge effluent that originates from a source on land into coastal waters without a general authorisation or a coastal waters discharge permit;
- Dumping takes place under a valid and lawful permit; and
- When a person unlawfully constructed a building or other structure on coastal public property, he or she must apply for a coastal lease or demolish the building or structure and restore the site to its previous condition.

### **FURTHER INFORMATION**

#### **Regulators**

Department of Environmental Affairs  
Minister of Water and Environmental Affairs

#### **Website**

<https://www.environment.gov.za>