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GOVERNMENT NOTICE

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 1399

21 December 2001

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

**REGULATIONS IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998:
CONTROL OF VEHICLES IN THE COASTAL ZONE**

The Minister of Environmental Affairs and Tourism has under section 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) made the regulations in the Schedule.

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To provide for a general prohibition on the recreational use of vehicles in the coastal zone, to provide procedures for approving the use of vehicles in the coastal zone under specific circumstances, to provide measures for the enforcement of these regulations and to prescribe penalties in respect of contraventions.

Definitions

1. In these regulations any word or expression given a meaning in the Act has that meaning, unless such word or expression is defined in this regulation for the purposes of these regulations, and, unless the context indicates otherwise -

"Act" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"authorised officer" means any person -

- (a) appointed as a fishery control officer or honorary marine conservation officer in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998); or
- (b) empowered to enforce the provisions of any law relating to the protection of the environment within the coastal zone provided that he or she is, or is deemed under any legislation to be, a peace officer as defined in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), including any person appointed by the manager of a coastal protected area to enforce the provisions of legislation pertaining to the establishment or management of such area;

"beach" means unconsolidated sediment forming the unvegetated edge of the shoreline of the sea or an estuary that extends from the low-water mark landwards to higher features of the coast such as dunes, cliffs or vegetated soil;

"boat-launching site" means a place at which vehicles are used in connection with the launching of boats or other vessels into the sea or into an estuary, and "licensed boat-launching site" means such a site that has a valid licence under regulation 7;

"coastal land-form" means a topographical feature resulting from geomorphological processes affecting the coastline;

"coastal protected area" means an area situated wholly or partially within the coastal zone that has been legally designated as a protected area for the purposes of conserving any aspect of the environment;

"coastal wetland" means an area adjacent to the sea, an estuary or coastal freshwater lake that is regularly or periodically submerged by water, and includes salt marshes, mangrove areas, inter-tidal sand and mud flats, marshes, and minor coastal streams regardless of whether they are of a saline, freshwater or brackish nature;

"coastal zone" means the area adjacent to the sea characterised by coastal land-forms, and includes beaches, dunes, estuaries, coastal lakes, coastal wetlands, land submerged by the waters of the sea, or of any estuary, coastal lake or coastal wetland, boat-launching sites, proclaimed harbours and recreational use areas;

"dune" means a mound or ridge of loose wind-blown material, usually sand, whether covered by vegetation or not;

"estuary" means a partially or fully enclosed body of water which is open to the sea permanently or periodically, and in which the water level rises and falls as a result of the action of the tides whenever it is open to the sea;

"high-water mark" means the highest line reached by the waters of the sea or of an estuary during either spring tides or ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

"local authority" means a municipality which is established in terms of legislation intended to give effect to section 151 of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

"low-water mark" means the lowest line to which the waters of the sea or of an estuary recede during periods of ordinary spring tides;

"manager of a coastal protected area" means the organization responsible for managing the coastal protected area;

"permissible use" means a use of a vehicle within the coastal zone referred to in regulation 4 and for which a permit under these regulations is not required;

"physically disabled person" means a person with a disability that significantly limits their functional mobility as defined in the World Health Organization's International Classification on Functioning and Disability in Health;

"proclaimed harbour" means any harbour or port that has been proclaimed or established in terms of legislation;

"provincial authority" means the provincial department responsible for environmental affairs;

"public road" means any road which the public has the legal right to use;

"recreational use area" means an area designated as such by the Director-General under regulation 5;

"scientific research" means research carried out by a recognized institute established for the purpose of scientific research, or research carried out by a recognized institution of higher learning, provided that in order to be carried out effectively such research requires the use of a vehicle;

"use" in relation to a vehicle includes driving, operating or being conveyed by, that vehicle; and

"vehicle" means any motorised conveyance which is designed to transport one or more persons on land and includes a trailer.

General duty of care

2. Any person who uses a vehicle within the coastal zone must take all reasonable measures to avoid causing harm to the environment and in so far as such harm is authorised by law or cannot reasonably be avoided or stopped, to minimize or rectify the harm.

General prohibition

3. No person may use any vehicle in the coastal zone unless that use -
 - (a) is a permissible use under regulation 4; or
 - (b) is authorised in terms of a permit granted under regulation 6; or
 - (c) is authorised in terms of an exemption granted by the Minister under regulation 22; or
 - (d) is lawful in terms of regulation 24.

Permissible uses

4. The following uses of vehicles within the coastal zone are permissible without a permit granted under regulation 6 -
 - (a) the use by any person of any vehicle -
 - (i) on a public road;
 - (ii) on private land with the permission of the owner or lawful occupier of that land;
 - (iii) on a road within a coastal protected area with the permission of the manager of that coastal protected area;
 - (iv) for mining or associated purposes within a mining area as defined in section 1 of the Minerals Act, 1991 (Act No. 50 of 1991);
 - (v) within any part of a proclaimed harbour that has already been physically modified to the extent that it is no longer in a natural or semi-natural state;
 - (vi) in an emergency situation in order to safeguard human life or health, property or any aspect of the environment;
 - (b) the use of any vehicle within a boat-launching site in accordance with the licence issued in terms of regulation 7 for that boat-launching site;
 - (c) the use by a physically disabled person of an electrically propelled vehicle that is specifically designed and manufactured for use by a physically disabled person; and
 - (d) the use by an employee of any organ of state of any vehicle for the purposes of performing the public duties of that organ of state.

Recreational use areas

5.
 - (1) The Director-General may by notice in the Gazette designate areas of the coastal zone as recreational use areas within which vehicles may be used for recreational purposes in terms of a permit granted under regulation 6.
 - (2) A local authority or a manager of a coastal protected area may apply to the Director-General to designate an area under its jurisdiction as a recreational use area if such local authority or manager has fulfilled the requirements of section 24(7) of the Act in respect of the investigation, assessment and communication of the potential impacts

- of the activities associated with recreational vehicle use in the proposed recreational use area.
- (3) The Director-General must not designate a recreational use area unless he or she has consulted with each provincial authority, local authority, manager of a coastal protected area and other organ of state that has jurisdiction over any part of the proposed recreational use area.
 - (4) The Director-General must not designate a recreational use area unless he or she is satisfied on the basis of assessments undertaken in accordance with section 24(7) of the Act that doing so -
 - (a) will not result in significant harm to the environment; and
 - (b) will not seriously affect any rights of the general public to enjoy the coastal zone.
 - (5) The Director-General may designate a recreational use area subject to terms or conditions that must be complied with by the authority empowered to issue permits in terms of regulation 6 for the use of vehicles within that area.
 - (6) An applicant for a permit to use a vehicle for recreational purposes within a recreational use area need not provide evidence that the requirements of section 24(7) of the Act relating to the investigation, assessment and communication of the potential impact of that activity have been complied with.
 - (7) The Director-General may by notice in the Gazette revoke the designation of an area as a recreational use area, or change the terms and conditions imposed when it was designated, if the Director-General is satisfied after consultation with each provincial authority, local authority, manager of a coastal protected area and other organ of state that has jurisdiction over any part of that recreational use area and on the basis of information that was not considered when the recreational use area was designated, that it is necessary or desirable to do so in order or to protect the quality of the environment within the coastal zone.

Applications for permits to use vehicles in coastal zone

6. (1) The following authorities may grant permits for use of vehicles -
 - (a) the Department of Environmental Affairs and Tourism if the application relates to the use of a vehicle for a non-recreational activity that requires authorisation in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998); or
 - (b) the manager of a coastal protected area if the application relates to the use of a vehicle within that coastal protected area; or
 - (c) the relevant local authority to which the provincial authority has in terms of regulation 10 delegated the authority to grant permits; or
 - (d) the provincial authority in all circumstances other than those referred to in paragraphs (a), (b) or (c).

- (2) Any person who wishes to use a vehicle in the coastal zone for a purpose contemplated in subregulation (3) must apply in writing to the relevant authority referred to in subregulation (1) for a permit.
- (3) Subject to regulation 9, the relevant authority referred to in subregulation (1) may grant a permit for one or more vehicles to be used by the applicant within the coastal zone for the purposes of -
 - (a) scientific research;
 - (b) non-recreational activity approved in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);
 - (c) recreational use within a recreational use area;
 - (d) any tourism business conducted by a tour operator; and
 - (e) gaining access to properties provided that there is no reasonable road access to those properties and the rights to occupy or use them have been lawfully acquired.
- (4) An application for a permit under this regulation must -
 - (a) be made in the form stipulated by the relevant authority;
 - (b) subject to regulation 22, be accompanied by payment or proof of payment of the application fee stipulated by the relevant authority referred to in subregulation (1);
 - (c) clearly indicate the types of vehicles and the nature of the use for which the permit is required;
 - (d) set out fully the reasons why the permit is required; and
 - (e) subject to regulation 5(6) and regulation 22, be accompanied by evidence that the requirements of section 24(7) of the Act relating to the investigation, assessment and communication of the potential impact of the activities have been complied with.

Licence for boat-launching sites

7. (1) The following authorities may issue a licence for a boat-launching site -
 - (a) the manager of a coastal protected area if the application relates to a boat-launching site within that coastal protected area;
 - (b) the relevant local authority to which the provincial authority has in terms of regulation 10 delegated the authority to grant licences under this regulation;
or
 - (c) the provincial authority in all circumstances other than those referred to in paragraphs (a) and (b).
- (2) No person may operate a boat-launching site or use a vehicle at a boat-launching site, unless the operator of that site has a valid boat-launching site licence for that site issued under these regulations.

- (3) The operator or prospective operator of a boat-launching site must apply to the relevant authority referred to in subregulation (1) for a licence to operate a boat-launching site.
- (4) An application for a licence must -
 - (a) be made in the form stipulated by the relevant authority referred to in subregulation (1);
 - (b) be accompanied by payment or proof of payment of the application fee stipulated by the relevant authority;
 - (c) clearly indicate -
 - (i) the boundaries of the proposed boat-launching site and all access roads;
 - (ii) the types of vehicles that will be used at the site;
 - (d) set out fully the reasons why the boat-launching site is required;
 - (e) include a plan for managing activities at the site in a manner that avoids or minimises damage to the environment, and
 - (f) subject to regulation 22, be accompanied by evidence that the requirements of section 24(7) of the Act relating to the investigation, assessment and communication of the potential impact of the activities associated with boat-launching at the site have been complied with.

Assessment of impact of using vehicles in the coastal zone

8. (1) An applicant for a permit under regulation 6 or for a licence under regulation 7 must fulfil the requirements of section 24(7) of the Act in respect of the investigation, assessment and communication of the potential impact of the activity concerned.
- (2) Unless an applicant is suitably qualified and competent to perform the assessments required by section 24(7) of the Act, the applicant must -
 - (a) appoint an independent consultant to undertake the investigations and other procedures necessary to comply with section 24(7) of the Act;
 - (b) ensure that the consultant has the required expertise and ability to fulfil the requirements of section 24(7) of the Act; and
 - (c) pay all costs incurred in connection with the employment of the consultant or any other person acting on the applicant's behalf to comply with these regulations.

Applications to the Director-General

9. (1) An authority referred to in regulations 6(1) and 7(1) must refer an application for a permit under regulation 6 or for a licence under regulation 7 to the Director-General for determination if -
 - (a) the application concerns the use of vehicles within a coastal protected area that has been legally designated as an area of national or international importance;
 - (b) the Director-General and the said authority jointly decide that the application should be considered by the Director-General;

- (c) the applicant is an organ of state within the national sphere of government; or
 - (d) the use of the boat-launching site for which the licence is required or any vehicle for which the permit is required has the potential to affect the environment in another province or country.
- (2) If the applicant for a permit under regulation 6 or for a licence under regulation 7 is the authority to whom the application would ordinarily be made, then the application must be made -
- (a) to the provincial authority if the applicant is a local authority or the manager of a coastal protected area other than one referred to in paragraph (1)(a); or
 - (b) to the Director-General if the applicant is a provincial authority.

Delegation to local authorities

10. (1) A provincial authority may delegate its authority to issue permits or licences under these regulations or to administer any aspect of the regulations to a local authority that has sufficient competence and capacity to perform these functions effectively and to discharge the responsibilities set out in regulation 11.
- (2) Any application by a local authority for a permit or licence must be made to a provincial authority.

Responsibilities of authorities issuing permits and licences

11. An authority referred to in regulation 6(1) or 7(1) must-
- (a) ensure that its officers and any agents or consultants engaged by it to evaluate applications submitted in terms of these regulations have the expertise required to evaluate compliance with the requirements of section 24(7) of the Act;
 - (b) ensure that the evaluation and decisions required in terms of these regulations are made efficiently and within a reasonable time, subject to the applicant being informed in writing of any undue delays which may occur; and
 - (c) provide the applicant with any information in its possession that could assist the applicant in complying with these regulations.

Consideration of application

12. (1) An authority referred to in regulation 6(1) and 7(1) may refuse to consider an incomplete application for a permit or licence.
- (2) The said authority may, after considering an application submitted in terms of these regulations-
- (a) request the applicant to carry out further investigations and/or submit additional information;
 - (b) request the applicant to consult with specific organisations, authorities, persons or interested parties in general and submit the results of the required consultations;

- (c) refuse the application; or
 - (d) issue a permit or licence.
- (3) The said authority, or in the case of a matter referred to in regulation 9, the Director-General, must refuse the application if it reasonably believes -
- (a) that granting the application would be inconsistent with the national environmental management principles in Chapter 1 of the Act;
 - (b) on the basis of information submitted with the application to satisfy the requirements of regulation 8 and section 24(7) of the Act, that the application should be refused; or
 - (c) that granting the application is likely to result in a threat to the safety of the general public or a substantial interference with their right to use and enjoy any part of the coastal zone.
- (4) If the said authorities or the Director-General decide to issue a permit or licence, it must be issued subject to appropriate terms and conditions to ensure that the use of vehicles in terms of that permit or licence is consistent with the national environmental management principles in Chapter 1 of the Act, including, where appropriate, requirements that specified measures be taken to avoid, mitigate, control or manage environmental impacts or to rehabilitate the environment.
- (5) A permit under regulation 6 must not be granted for a period of more than 12 months and a boat-launching site licence under regulation 7 must not be granted for a period of more than 36 months.

Record of decision

13. (1) The authorities referred to in regulation 6(1) and 7(1), or in the case of a matter referred to in regulation 9, the Director-General, must issue a written record of the decision made in terms of these regulations to the applicant, and on request to any other interested party.
- (2) The record of the decision must include-
- (a) the geographic location of the area referred to in the application;
 - (b) a precise description of the boundaries of the area affected by the decision;
 - (c) the name, address and telephone number of the applicant;
 - (d) the name, address and telephone number of any consultant involved in the application;
 - (e) the decision of the said authority;
 - (f) the reasons for the decision;
 - (g) the conditions, if any, included in the permit or licence;
 - (h) the date of expiry or the duration of the permit or licence;
 - (i) the signature of a person who represents the relevant authority or the Director-General; and
 - (j) the date of the decision.

Manner of appeal

14. (1) An appeal against the decision of an authority referred to in regulations 6(1) and 7(1) or of the Director-General to the Minister in terms of section 43 of the Act must be made in writing within 30 days of the date on which the record of decision was issued to the applicant in terms of these regulations.
- (2) An appeal must state the grounds for the appeal and be accompanied by all relevant original documents or copies thereof which a commissioner of oaths has certified as being true copies.

Suspension, amendment and cancellation of permits and licences

15. (1) Subject to subregulation (2), a permit or licence issued under these regulations may at any time be suspended, cancelled or amended.
- (2) A permit or licence may only be suspended, cancelled or amended if -
- (a) the authority or Director-General that issued it is satisfied on the basis of information that was not considered when the permit or licence was issued, that it is necessary or desirable to suspend, cancel or amend the permit or licence to prevent deterioration or further deterioration of the quality of the environment within the coastal zone;
 - (b) other similar permits or licences held by other persons in the same vicinity have also been reviewed and the suspension, cancellation or amendment does not unfairly discriminate against the holder in relation to other holders of similar permits or licences in the same vicinity; and
 - (c) the holder of the permit or licence is given an opportunity to make written representations before the permit or licence is cancelled or amended.
- (3) A permit or licence may not be amended in such a way that the period for which it is valid exceeds the maximum period for which it may be issued.
- (4) If the Minister has reason to believe that a permit or licence issued by an authority under these regulations is inconsistent with the national environmental management principles in Chapter 1 of the Act or with any other provision of the Act or these regulations, the Minister may direct the authority to review the decision and within a specified period either -
- (a) to suspend, cancel or amend the permit or licence; or
 - (b) to give reasons to the Minister why it does not intend doing so.

Law enforcement

16. (1) Any authorised officer may-
- (a) arrest any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations;

- (b) seize any vehicle if he or she on reasonable grounds believes that the vehicle –
 - (i) has been or is being used in the commission of an offence in terms of these regulations;
 - (ii) may afford evidence of the commission or suspected commission of an offence in terms of these regulations; or
 - (iii) is intended to be used in the commission of an offence in terms of these regulations;
 - (c) at any time within 30 days of the alleged commission of the offence, issue a summons in terms of section 54 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) to any person whom he or she has reasonable grounds to believe has committed or is committing an offence in terms of these regulations.
- (2) Any person issued with a summons in terms of subregulation 16(1)(c) may in terms of section 57 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), pay an admission of guilt fine of R1000.

Co-operation with authorised officers

17. (1) Whenever an authorised officer exercises any power or performs any duty in terms of these regulations, he or she shall at the request of any person affected thereby, produce an identity card identifying the officer as an authorised officer in terms of these regulations.
- (2) The driver of any vehicle in the coastal zone must comply immediately with any lawful instruction given or request made by an authorised officer.
- (3) Any person who has been granted a permit to use a vehicle in the coastal zone under these regulations, or any person whose application for an exemption under regulation 22 has been granted, must immediately produce such permit or proof of such exemption if requested to do so by an authorised officer.
- (4) No person shall—
- (a) assault, obstruct, resist, delay, threaten, intimidate, abuse or otherwise interfere with an authorised officer in the performance of his or her duties, or any other person lawfully assisting and acting under the orders of an authorised officer;
 - (b) incite or encourage any other person to assault, resist or obstruct any authorised officer while exercising or performing his or her powers or duties, or any other person lawfully assisting and acting under the orders of the authorised officer;
 - (c) fail to comply with the lawful requirements of any authorised officer; or
 - (d) give any false or misleading particulars to an authorised officer.

Procedure with regard to seized vehicles

18. (1) Any vehicle seized under these regulations must -
- (a) be immediately delivered to a police official for safe-keeping if the authorised officer is not a police official as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (b) be dealt with in accordance with the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) except as otherwise provided in these regulations.
- (2) If any vehicle has been seized in terms of regulation 16 and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within 90 days of the seizure, the Director-General may apply to the court for it to be forfeited to the State and the court shall make any order it considers appropriate.
- (3) If the lawful owner of a seized vehicle fails to take delivery of the vehicle within 90 days of being notified by registered post at his or her last-known address that he or she may take possession of the vehicle, the vehicle shall be forfeited to the State and disposed of as the Director-General in his or her discretion considers appropriate.
- (4) If the owner of a vehicle or the person having the possession, care or control of it at the time of its seizure is served with a summons or convicted of an offence in terms of these regulations and a fine is imposed, the vehicle may be detained until all fines, orders for costs and penalties imposed in terms of these regulations have been paid.
- (5) If any payment contemplated in subregulation (4) is not made within such time as the court may determine, the court may order the vehicle to be forfeited to the State.

Offences and penalties

19. Any person who contravenes any provision of these regulations shall be guilty of an offence and liable on conviction to a minimum fine of R2000 but not exceeding R10000, or to imprisonment for a minimum period of six months but not exceeding two years, or to both such fine and such imprisonment.

Presumptions

20. If in the course of any proceedings in connection with an offence under these regulations it is proved that-
- (a) a person was sitting behind the wheel or at the controls of a vehicle, whether or not the vehicle was stationary, that person is presumed, unless the contrary is proved, to have been using that vehicle in that place;
 - (b) a person used a vehicle in the coastal zone other than on a public road, that person is presumed, unless the contrary is proved, to have used the vehicle in a manner that was not permissible under regulation 4; was not authorised in terms of a permit granted under regulation 6 or an exemption under regulation 22, and was not lawful in terms of regulation 24.

Forfeiture

21. (1) A court convicting any person of an offence under these regulations may declare any vehicle used in committing the offence, or the rights of the convicted person to such vehicle, to be forfeited to the State.
- (2) Any vehicle ordered to be forfeited in terms of these regulations shall be disposed of as the Director-General in his or her discretion considers appropriate.

Exemptions

22. (1) Any person, including an organ of state, may apply in writing to the Minister for exemption from the requirement -
- (a) to undertake an environmental assessment in terms of regulation 8; or
- (b) to obtain a permit under regulation 6 or a licence under regulation 7 in respect of specified uses of vehicles in the coastal zone.
- (2) The Minister must not grant an exemption unless notice of the application has been published in a newspaper circulating in the area to which the application applies and the Minister is satisfied that the proposed use of vehicles in the coastal zone -
- (a) will not result in significant harm to the environment;
- (b) will not seriously affect any rights of the general public to enjoy the coastal zone; and
- (c) is in the public interest, in the interest of providing equitable access by any physically disabled person to any part of the coastal zone, or in the interests of protecting the environment.
- (3) An application in terms of subregulation (1) must contain sufficient motivation to justify a requested exemption.

Conflict with other regulations and policies

23. These regulations will prevail if there is a conflict between any of the provisions in them and either -
- (a) the General Policy in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989): Control of Vehicles in the Coastal Zone, promulgated as Government Notice No. 858 in the Government Gazette of 29 April 1994; or
- (b) any other regulations, by-laws or other subordinate legislation relating to the use of vehicles in the coastal zone made under any Act, prior to these regulations coming into force.

Transitional provisions

24. (1) Despite any other provisions of these regulations, during the period of 18 months beginning on the date of commencement of these regulations, it is not an offence for

any person to use a vehicle within a site which was used for boat-launching purposes and where infrastructure for boat-launching purposes, such as launching ramps, existed prior to the date of commencement of these regulations.

- (2) Despite any other provisions of these regulations, during the period of 11 months beginning on the date of commencement of these regulations, it is not an offence for any person to use a vehicle for the purposes of -
- (a) carrying out scientific research provided that the research commenced prior to the date of commencement of these regulations;
 - (b) non-recreational activity approved in terms of the provisions of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);
 - (c) any tourism business conducted by a tour operator; or
 - (d) gaining access to a property that has no reasonable road access provided that the right to occupy or use that property was lawfully acquired.

Commencement

25. These regulations commence 30 days after the date on which they are promulgated.

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