



# C.A.P.E. ESTUARIES PROGRAMME

## Interpretation of Legislation pertaining to Management of Environmental Threats within Estuaries

# G.1

C.A.P.E. Estuarine Management Guideline



Version 1  
December 2007

**Our strategic vision for the estuaries in the Cape Floristic Region is:**

*Our estuaries are beautiful, rich in plants  
and animals, they attract visitors,  
sustain our livelihoods and  
uplift our spirits.*

*C.A.P.E. Estuaries Guideline 1: Legislation pertaining to Management of  
Environmental Threats within Estuaries*

Susan Taljaard  
CSIR, Natural Resources and Environment  
P O Box 320 Stellenbosch, 7599  
[staljaard@csir.co.za](mailto:staljaard@csir.co.za)

Peer reviewed by:

Smith Ndlovu & Summers Attorneys  
P.O. Box 619, Cape Town, 8000  
Reference: Mr N D Smith & Ms. M V Hofmeyr  
[nicks@law.co.za](mailto:nicks@law.co.za)

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## 1. Introduction

Objective 1 of the *Project on the Development of a Generic Estuarine Management Plan for the CFR* (the "project"), which is a component within the larger C.A.P.E. Estuarine Management Programme, included a review of the legislative framework relevant to South African estuaries that currently regulates and/or otherwise addresses aspects of estuarine management. The approach followed in preparing the required legal review was to consolidate and refine the outputs from existing legal reviews such as those prepared by Smith and Cullinan (2000), Van Niekerk and Taljaard (2003) and McGwynne and McKenzie (2006).

The legal review is captured in **Chapter 2** of this report. It lists and describes relevant international obligations and agreements; national Acts of Parliament and regulations promulgated under the latter statutes; and key provincial and local legislation that are of relevance to the protection and management of South Africa's estuaries; as well as government lead agents (i.e. those responsible for the implementation of such legislation and/or the management of estuaries).

Objective 2 of the project included the development of a series of guideline documents to assist with the development of estuarine management plans, specifically aimed at local management level. One aspect that had to be addressed was guidance on the interpretation of legislation pertaining to the environmental threats in estuaries. **Chapter 3** of this report therefore provides a list of specific activities and developments typically encountered in South African estuaries and link these to specific sections in relevant Act, also highlighting any Regulations that may have been promulgated under such Acts.

**Chapter 4** highlights available guidelines and best practice policies that may assist local managers in the implementation of relevant legislation.

A CD is also included where the different Acts of Parliament, Regulations and other documentation have been hyperlinked. Web links to relevant website are also provided for further reading.

## **2. Legal Framework relevant to South African Estuaries**

In the design and planning of estuarine management plan, it is important to ensure that such plans are aligned with existing statutory requirements, both international and national, as well as with other related national and provincial operational policies and strategies.

Important international obligations and agreements, national policies and legislation, as well as existing operational management strategies and plans relevant to the management of estuaries in South Africa, are discussed here. A more comprehensive list containing other legislation that may potentially also apply to estuaries are provided in Appendix A.

### **2.1 Important International Obligations and Agreements**

| <b>INTERNATIONAL OBLIGATION</b>   | <b>SHORT DESCRIPTION</b>   |
|---|--|
| <u><a href="#">Civil Liability Convention (1969) as replaced by its 1992 Protocol and amended in 2000</a></u>                             | This Convention ( <a href="http://www.imo.org/">www.imo.org/</a> ) was adopted to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships. The Convention places the liability for such damage on the owner of the ship from which the polluting oil escaped or was discharged. The <b>Marine Pollution (Control and Civil Liability) Act (No. 6 of 1981)</b> gives legal effect to this Convention in South Africa.   |
| <u><a href="#">Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) (Ramsar Convention)</a></u>      | <p>The broad aims of this Convention (<a href="http://www.ramsar.org/">www.ramsar.org/</a>) are to stem the loss and to promote wise use of all wetlands. The Convention includes estuaries in its definition of wetlands. The Convention defines wetlands as 'areas of marsh, fen, peatland or water whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres' (which includes estuaries).</p> <p>South Africa presently has 17 sites designated as Ramsar sites (<a href="http://www.ramsar.org/profile/profiles_southafrica.htm">www.ramsar.org/profile/profiles_southafrica.htm</a>), with a total surface area of 498 721 ha, including estuaries such as the Orange, Verlorenvlei, Sout (De Hoop Vlei), Heuningnes (De Mond), St Lucia and Kosi Bay. A <b>Wetland Conservation Bill</b> has been proposed which will further assist South Africa in meeting the aims of the Convention.</p> |
| <u><a href="#">Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) (World Heritage Convention)</a></u> | <p>The Convention (<a href="http://whc.unesco.org/en/convention/">http://whc.unesco.org/en/convention/</a>) states that each state party to that Convention recognizes the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated in its territory (which may include estuaries).</p> <p>South Africa acceded to the Convention in 1997, given legal status through the <b>World Heritage Conservation Act (Act 49 of 1999)</b>. The Greater St. Lucia Wetland Park (1999) (renamed to the iSimangiliso Wetland Park) and the Cape Floristic Region (2004) for example, were given international recognition as World Heritage Sites.</p>  |
| <u><a href="#">Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter (1972, as amended)</a></u>           | The London Convention 1972 is an international treaty that limits the discharge of waste that are generated on land and disposed of at sea. The 1996 Protocol is a separate agreement that modernized and updated the London Convention, following a detailed review that began in 1993. The 1996 Protocol will eventually replace the London Convention. States can be a Party to either  |

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| <u>(London Convention)</u>   | <p>the London Convention 1972, or the 1996 Protocol, or both. The Protocol defines dumping, amongst others as 'any deliberate disposal into the sea of waste or other matter from vessels, aircraft, platforms or other man-made structures at sea'.</p> <p>South Africa is a signatory to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter 1972, as amended (London Convention) (<a href="http://www.londonconvention.org/">www.londonconvention.org/</a>). The <b>Dumping at Sea Control Act (No. 73 of 1980)</b> gives legal status to the London Convention in South Africa (to be replaced by the <b>National Environmental Management: Integrated Coastal Management Bill</b>).</p>  |
| <u>International Convention<br/>for the Prevention of<br/>Pollution from Ships<br/>(MARPOL) (1973/1978)</u>          | <p>The MARPOL Convention (<a href="http://www.imo.org/">www.imo.org/</a>) is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. It is a combination of two treaties adopted in 1973 and 1978 respectively and updated by amendments through the years. The Convention includes regulations aimed at preventing and minimizing pollution from ships and currently includes six technical Annexes:</p> <ul style="list-style-type: none"> <li>▪ Annex I Regulations for the Prevention of Pollution by Oil</li> <li>▪ Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk</li> <li>▪ Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form</li> <li>▪ Annex IV Prevention of Pollution by Sewage from Ships</li> <li>▪ Annex V Prevention of Pollution by Garbage from Ships</li> <li>▪ Annex VI Prevention of Air Pollution from Ships (entry into force in May 2005)</li> </ul> <p>States Parties must accept Annexes I and II, but the other Annexes are voluntary.</p> <p>In October 2006 amendments to MARPOL designating the waters off Southern South Africa as a Special Area under the Convention. The designation will provide measures to protect wildlife and the marine environment in an ecologically important region used intensively by shipping.</p> <p>The <b>International Convention for Prevention of Pollution from Ships Act (No. 2 of 1986)</b> gives legal effect to MARPOL in South Africa, as well as Annex I and Annex II. The <b>Marine Pollution (Intervention) Act (No. 64 of 1987)</b> - as last amended by the <b>South Africa Maritime Safety Authority Act (No. 5 of 1998)</b> – also incorporates this convention into South Africa law.</p> |
| <u>Convention of Migratory<br/>Species of Wild Animals<br/>(1979)<br/>(Bonn Convention)</u><br><br><u>Appendices</u> | <p>The Convention (<a href="http://www.cms.int/">www.cms.int/</a>) was a response to the need for nations to co-operate in the conservation of animals that migrate across their borders. These include terrestrial mammals, reptiles, marine species and birds. Special attention is paid to endangered species. South Africa is a major partner in this Convention as it is the terminus for many of the migratory species, both the Palaearctic (birds) and the Antarctic species (whales and birds). South Africa acceded to the Convention in December 1991.</p>  |
| <u>Abidjan Convention<br/>(1981)<br/>&amp;<br/>Nairobi Convention<br/>(1985)</u>                                     | <p>In 1974, the United Nations Environment Programme (UNEP) initiated the Regional Seas Programme (<a href="http://www.unep.org/regionalseas/">www.unep.org/regionalseas/</a>) with a view to improving the control of marine pollution and management of marine and coastal resources (including estuaries). The Programme covers eleven regions. For each region an action plan was developed which included a Regional Convention and technical protocols signifying the commitment of participating</p>  |

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|  | countries to address, individually and jointly, their common problems. The regions including South Africa are the West and Central African region (Abidjan Convention, came into force in 1984) and the Eastern African or West Indian Ocean (WIO) region (Nairobi Convention, came into force in 1996).  |
| <u><a href="#">Agenda 21 (1992)</a></u><br><br><u><a href="#">as reaffirmed at the United Nations World Summit on Sustainable Development - Johannesburg Summit (2002)</a></u> | <p>Agenda 21 (<a href="http://www.un.org/esa/sustdev/documents/agenda21/index.htm">www.un.org/esa/sustdev/documents/agenda21/index.htm</a>) is an internationally accepted strategy for sustainable development, decided upon at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992. Agenda 21 is, however, not legally binding on states, and merely acts as a guideline for implementation. The Johannesburg Summit presented an opportunity for today's leaders to adopt concrete steps and identify quantifiable targets for better implementing Agenda 21.</p> <p>Agenda 21 requires, for example, the preparation of a State of the Environment Report prepared on national, provincial and local level (responsibility of the National Department of Environmental Affairs and Tourism, Provincial Departments of Environmental Affairs and Local Authorities, respectively. These may include State of the Estuaries reports.</p>                |
| <u><a href="#">United Nations Convention on Biological Diversity (1992)</a></u>  | <p>The Convention on Biological Diversity (<a href="http://www.biodiv.org/convention/default.shtml">www.biodiv.org/convention/default.shtml</a>) has three objectives: the conservation of biological diversity; the sustainable use of biological resources; and the fair and equitable sharing of benefits arising from the use of genetic resources.</p> <p>As a party to the Convention, South Africa is required to develop national strategies, plans or programmes, or adapt existing ones, to address the provisions of the Convention, and to integrate the conservation and sustainable use of biodiversity into sectoral and cross-sectoral plans, programmes and policies. South Africa's response to this requirement is contained in the White Paper on the <b>Conservation and sustainable use of South Africa's biological diversity (July 1998)</b>, given legal status through the <b>National Environmental Management: Biodiversity Protection Act (No. 10 of 2004)</b>.</p>          |
| <u><a href="#">United Nations Framework Convention on Climate Change (1992)</a></u>  | <p>The United Nations Framework Convention on Climate Change (<a href="http://unfccc.int/2860.php">http://unfccc.int/2860.php</a>) sets an "ultimate objective" of stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Countries ratifying the Convention agree to take climate change into account in such matters as agriculture, energy, natural resources, and activities involving sea coasts. They agree to develop national programmes to slow climate change. The Convention encourages parties to cooperate to reduce greenhouse gas emissions, share technology and carry out scientific research.</p> <p>South Africa's ratified the Convention in 1997. The Department of Environmental Affairs and Tourism published a Climate Change Policy Discussion Document in 1998 to begin the process of formulating policies to respond to climate change both locally and internationally.</p> |
| <u><a href="#">Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA) (1995)</a></u>   | <p>The GPA (<a href="http://www.gpa.unep.org/">www.gpa.unep.org/</a>) builds on the principles of Agenda 21 and was adopted in November 1995. The programme is designed to assist states in taking action, individually or jointly, within their respective policies, priorities and resources, that will lead to the prevention, reduction, control or elimination of the degradation of the marine environment, as well as to its recovery, from the impacts of land-based activities (including pollution and developments/activities leading to the destruction of marine habitat). The GPA identifies the Regional Seas Programme of UNEP as an appropriate framework for delivery of this programme at regional level. South Africa</p>   |

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|  | <i>upholds the principles of GPA.</i>  |
| <u><i>International Convention<br/>for the Control and<br/>Management of Ships'<br/>Ballast Water and<br/>Sediments (2004)</i></u> | <p><i>The Convention was adopted by consensus at a Diplomatic Conference at held at the International Maritime Organisation (London) in February 2004. Invasive aquatic species are one of the four greatest threats to the world's oceans, and can cause extremely severe environmental, economic and public health impacts. The GEF/UNDP/IMO Global Ballast Water Management Programme (GloBallast) (<a href="http://globallast.imo.org/index.asp">http://globallast.imo.org/index.asp</a>) is assisting developing countries to:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Reduce the transfer of harmful aquatic organisms and pathogens in ships' ballast water</i></li> <li>▪ <i>Implement ballast water guidelines of the IMO</i></li> <li>▪ <i>Prepare for the Convention on ballast water.</i></li> </ul> |

## **2.2 Important National Policies (White Papers)**

A National Policy is a statement of intent by government on its vision, principles, goals and objectives as well as institutional arrangement to achieve desired outcomes for specific sectors. National Policy is usually captured in White Papers and important policies pertinent to the management of estuaries are discussed here.

([www.info.gov.za/documents/whitepapers/index.htm](http://www.info.gov.za/documents/whitepapers/index.htm))

| <b>WHITE PAPER</b>   | <b>SHORT DESCRIPTION</b>   |
|--|--|
| <i>White Paper for<br/>Sustainable Coastal<br/>Development in South<br/>Africa (June 2000)</i> | <p><i>The White Paper (sets out a policy which aims to achieve sustainable coastal development in South Africa through integrated coastal management. The white paper sets out a vision, a number of principles and goals for coastal management.</i></p> <p><i>The key messages of the white paper are: 1) the value of the coast must be recognised, 2) sustainable coastal management must be facilitated; 3) the Coastal management must be co-ordinated and integrated; 4) the Government must adopt a co-operative style of management</i></p> <p><i>The key action points that the white paper lays out are (INR, 2000):</i></p> <ul style="list-style-type: none"> <li>▪ <i>Institutional and Legal Development: At a national level, the Department of Environmental Affairs and Tourism (DEAT) will act as national lead agent for coastal management and a new Integrated Coastal Management Act will be drafted. In the provinces lead agents for coastal management will be defined and Coastal Working Groups will be established. At a local level, local authorities will still have day-to-day coastal management responsibilities and it is proposed that some areas establish local coastal forums.</i></li> <li>▪ <i>Awareness, Education and Training: A coastal public awareness programme will be carried out in conjunction with the education and training of coastal stakeholders and role players.</i></li> <li>▪ <i>Information: A programme will be designed to monitor the state of the coast and regular state of the coast reports will be published. An information and decision-support system to assist coastal managers will be established.</i></li> <li>▪ <i>Projects: A shortlist of national and provincial priority issues will be identified and programmes developed to address these issue.</i></li> </ul> |

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|  | <p><i>The National Environmental Management: Integrated Coastal Management Act (when promulgated) will give legal status to the imperatives and objectives contained in the White Paper.</i></p>  |
| <p><i>White Paper on a National Water Policy for South Africa (April 1997)</i></p> | <p><i>The White Paper sets out the policy for the management of both quality and quantity of South Africa's water resources (including estuaries). The purpose includes:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Providing historical background regarding access to and the management of water in South Africa</i></li> <li>▪ <i>Explaining current development context in which South Africa finds itself;</i></li> <li>▪ <i>Explaining environmental and climatic conditions which affect the availability of water in South Africa</i></li> <li>▪ <i>Putting forward certain policies</i></li> <li>▪ <i>Outlining the proposed institutional framework for water management functions</i></li> <li>▪ <i>Outlining steps in order to translate the policy into law and action.</i></li> </ul> <p><i>The National Water Act (No. 36 of 1998) gives legal status to the imperatives and objectives contained in the White Paper.</i></p>  |
| <p><i>White Paper on Marine Fisheries Policy for South Africa (May 1997)</i></p>   | <p><i>The White Paper sets out the main policy principles that the Department of environmental Affairs and Tourism will endeavour to implement through its marine fisheries management institutions in order to achieve this overall policy objective. The objective is to improve the overall contribution of the fishing industry to the South Africa's economy.</i></p> <p><i>Expansion of the sector's total activity is limited by the natural productive capacity of the living marine resources from which the activities derive, and the necessity to limit and control the total harvesting pressure according to what the resources can sustain on a long-term basis. In spite of these constraints, the fisheries sector is of great importance to the economy in several coastal regions, and for the livelihood of many communities.</i></p> <p><i>The fisheries policy is founded on the belief that all natural marine living resources of South Africa, as well as the environment in which they exist and in which mariculture activities may occur, are a national asset and the heritage of all its people, and should be managed and developed for the benefit of present and future generations in the country as a whole.</i></p> <p><i>The Marine Living Resources Act (No. 18 of 1998) gives legal status to the imperatives and objectives contained in the White Paper.</i></p> |
| <p><i>White Paper on Environmental Management Policy (May 1998)</i></p>            | <p><i>The White Paper contains the government's environmental management policy and describes the context in which it has been developed. The White Paper has the following sections:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Introduction that sets out the concept of environment used in the policy, the scope and purpose of the policy</i></li> <li>▪ <i>New vision for environmental policy and the mission of the DEAT with respect to the new policy</i></li> <li>▪ <i>Policy principles that must be applied in developing and testing policy</i></li> <li>▪ <i>Government's strategic goals and supporting objectives to begin addressing major issues facing environmental management and the sustainable use of resources</i></li> </ul>  |

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|  | <ul style="list-style-type: none"> <li>Government's approach to governance, setting out the powers and responsibilities of the different spheres and agencies of government and the regulatory approach to environmental management.</li> </ul> <p>The purpose of policy is twofold:</p> <ul style="list-style-type: none"> <li>To inform the public of what government's objectives are and how it intends to achieve its objectives</li> <li>To inform government agencies and state organs what their objectives are and what they must do to achieve those objectives.</li> </ul> <p>The <b>National Environmental Management Act (No. 107 of 1998)</b> gives legal status to the imperatives and objectives contained in the White Paper.</p>  |
| <p><i>White Paper on Spatial Planning and Land-use Management (July 2001)</i></p>                    | <p>This White Paper intends to satisfy the following specific needs:</p> <ul style="list-style-type: none"> <li>Development of policies, which will result in the best use and sustainable management of land.</li> <li>Improvement and strengthening planning, management, monitoring and evaluation.</li> <li>Strengthening institutions and coordinating mechanisms.</li> <li>Creation of mechanisms to facilitate satisfaction of the needs and objectives of communities and people at local level.</li> </ul> <p>Integrated planning for sustainable management of land resources should thus ensure that:</p> <ul style="list-style-type: none"> <li>Development and developmental programmes are holistic and comprehensive so that all factors in relation to land resources and environmental conservation are addressed and included</li> <li>All activities and inputs are integrated and coordinated</li> <li>All actions are based on a clear understanding of the natural and legitimate objectives and needs of individual land users to obtain maximum consensus</li> <li>Institutional structures are put in place to develop debate and carry out proposals.</li> </ul>  |
| <p><i>White Paper on Integrated Pollution and Waste Management for South Africa (March 2000)</i></p> | <p>This white paper outlines the government's new thinking in relation to pollution and waste management. This management approach envisages pollution prevention, waste minimization, managing the environmental impacts associated with waste and pollution, remediating damaged environments and integrating the management of various sources of waste. This Integrated Pollution and Waste Management policy is a subsidiary policy of the overarching environmental management policy, as set out in the White Paper on Environmental Policy for South Africa, and further supported by NEMA.</p> <p>The white paper proposes a number of tools to implement the objectives of the policy it sets out. The most significant of these is a legislative programme that will culminate in new pollution and waste legislation. One of the identified administrative actions is initiating the process of integrating pollution and waste management functions within all spheres of government, including functions relating to water and marine pollution. A remediation fund for marine pollution will also be investigated. A National Waste Management Strategy, which will form the basis for translating the goals and objectives of this policy into practice, has also been developed.</p> <p>The <b>National Environmental Management: Waste Management Act (when</b></p> |

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| WHITE PAPER   | SHORT DESCRIPTION   |
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|   | <i>promulgated</i> ) will give legal status to the imperatives and objectives contained in the White Paper.   |
| <i>White Paper on Development and Promotion of Tourism in South Africa (May 1996)</i>                           | <p>The White Paper provides the government's stance on Tourism and describes the following:</p> <ul style="list-style-type: none"> <li>▪ Role of tourism in South Africa</li> <li>▪ Problems around tourism</li> <li>▪ Way towards a new tourism</li> <li>▪ Vision, objectives and principles</li> <li>▪ How to ignite tourism growth</li> <li>▪ Roles of the key player,</li> <li>▪ Organisational structures.</li> </ul> <p>Based on an assessment of the problems, constraints and opportunities facing the South African tourism industry, the concept of "Responsible Tourism" emerged as the most appropriate concept for the development of tourism in South Africa.</p>   |
| <i>White Paper: Mineral and Mining Policy for South Africa (October 1998)</i>                                   | <p>The White Paper is organised into six main themes of which one addresses Environmental Management. The policy states, amongst other, that government will ensure that the following principles are adhered to:</p> <ul style="list-style-type: none"> <li>▪ In order to achieve integrated and holistic environmental management, Government requires compliance with a single national environmental policy and governance within a framework of co-operative governance. The Department of Minerals and Energy will, in support of the lead agent (DEAT) develop and apply the necessary to ensure the mining industry's compliance with national policy on environmental management</li> <li>▪ During decision-making, a risk-averse and cautious approach will be adopted.</li> <li>▪ The polluter-pays principle will be applied.</li> <li>▪ A consistent standard of environmental impact management will be applied.</li> <li>▪ Equitable and effective consultation with interested and affected parties.</li> <li>▪ Mining companies will be required to comply with the local Development Objectives, spatial development framework and Integrated Development Planning of the municipalities within which they operate.</li> <li>▪ Clear guidelines for implementation of environmental management procedures and decision-making will be provided.</li> <li>▪ The principles of Integrated Environmental Management (IEM) will be applied in the mining industry, including cradle-to-grave management of environmental impacts.</li> </ul> <p>In terms of environmental management issues relevant to estuaries, the <b>Mineral and Petroleum Resources Development Act (No. 28 of 2002)</b> gives legal status to the imperatives and objectives contained in the White Paper.</p> |
| <i>White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity (August 1998)</i> | <p>Under the United Nations Convention on Biological Diversity South Africa is required to develop national strategies, plans or programmes, or adapt existing ones, to address the provisions of the Convention, and to integrate the conservation and sustainable use of biodiversity into sectoral and cross-sectoral plans, programmes and policies. South Africa's initial response to this requirement is contained in this White Paper.</p>  |

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| <b>WHITE PAPER</b>   | <b>SHORT DESCRIPTION</b>  |
|--|---|
|  | <p><i>The White Paper specifically recognises the importance of estuaries and commits the government to a number of strategies to protect wetland areas (including estuaries). The strategies suggested cut across a number of legislative sectors such as water law, resource conservation and planning. Some of the key strategies are (INR, 2000):</i></p> <ul style="list-style-type: none"> <li>▪ <i>Facilitate the development of appropriate legislation to secure the conservation of South Africa's wetlands, and to maintain their ecological and socio-economic function</i></li> <li>▪ <i>Promote the establishment of a National System of Protected Wetlands as part of the protected area system</i></li> <li>▪ <i>Prevent inappropriate activities and development around wetlands, and that of linear development in particular. Ensure that adequate buffer strips are retained around wetlands, taking due cognisance of the 1:50 year flood line</i></li> <li>▪ <i>Through establishing appropriate mechanisms and procedures, recognise the functions and values of wetlands in resource planning, management and decision-making</i></li> <li>▪ <i>Determine the impact of commercial, recreational and subsistence fishery practices on fisheries, fish, and their habitats, and develop guidelines for managing such fisheries on an ecologically sustainable basis.</i></li> </ul> <p><i>The National Environmental Management: Biodiversity Act (No. 10 of 2004) gives legal status to the imperatives and objectives contained in the White Paper.</i></p> |
| <i>Policy on Sustainable Forest Development in SA (1997)</i> | <p><i>The broad aim of the White Paper is to weld together the three strains of Indigenous Forest Management, Commercial Forestry and Community Forestry. It provides the background to the policy process, the new policy (including principals and objectives) and sets out how it intends to take policy into practices. Elements of the policy include:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Set of nine guiding principles</i></li> <li>▪ <i>Goal to be pursued in the next five years</i></li> <li>▪ <i>Overall policy to govern the place of forestry in the management of land, water and other natural resources</i></li> <li>▪ <i>Policy for: industrial forestry, community forestry, the conservation of our natural forests and woodland, South Africa's response to global concerns about forests; research, education and training and South Africa's relationships with states in the Southern African Development Community.</i></li> </ul> <p><i>The overall goal of Government is to promote a thriving forest sector, to be utilised for the lasting benefit of the nation, and developed and managed to protect the environment.</i></p> <p><i>The National Forests Act (No. 84 of 1998) gives legal status to the imperatives and objectives contained in this White Paper.</i></p>  |

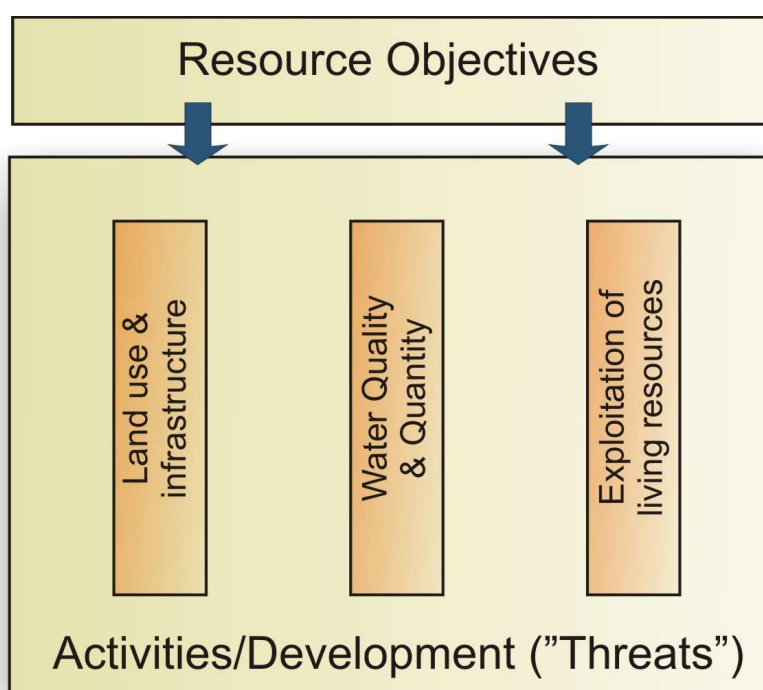
### **2.3 Important National Legislation (Acts)**

National Policy (in the form of White Papers) is afforded legal status through national legislation that articulates those Papers' aims and objectives (Acts of Parliament)

*Legislation*

With regard to the management of estuaries, legislation can be subdivided into those laws related to (see Figure 1):

- Setting of **resource objectives**
- Management and control of **activities or developments** posing a potential threat to estuaries, which in turn can be categorised into those related to:
  - Land use and infrastructure development
  - Water quality and quantity
  - Exploitation of living resources.



*Figure 1: Illustration of the sub-division and relationship in legislation governing Setting of Strategic Resource Objectives and those governing Activities and Developments (or Threats) in estuaries*

#### ***Setting of Resources Objectives***

Resource objectives refer to strategic objectives relevant to estuarine resources (e.g. on a national or regional/provincial level) down to the resource objectives set for a specific estuary. Resource quality objectives set for a specific estuary, need to be aligned with strategic objectives set for a particular resource type and include both biophysical and socio-economic aspects.

Important legislation relevant to Setting of Resource Objectives in estuaries is listed below.

| <b>NATIONAL LEGISLATION</b>             | <b>SHORT DESCRIPTION</b>   |
|---|--|
| <u><a href="#">The Constitution</a></u> | The Constitution ( <a href="http://www.info.gov.za/documents/acts/1996.htm">http://www.info.gov.za/documents/acts/1996.htm</a> ) |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| NATIONAL LEGISLATION   | SHORT DESCRIPTION  |
|--|--|
| <p style="text-align: center;"><u>(Act 108 of 1996)</u></p> <p><i>Lead Agent: As delegated in the Act as read with Schedules detailing Constitutional competence</i></p> | <p>which is the supreme law of the Republic of South Africa, provides the legal framework for legislation regulating environmental management in general, against the backdrop of the fundamental human rights enshrined in that statute.</p> <p>The most pertinent fundamental right in the context of estuarine management is the environmental right (reflected in section 24), which provides that:</p> <p>"Everyone has the right:</p> <ul style="list-style-type: none"> <li>▪ to an environment that is not harmful to their health or well-being; and</li> <li>▪ to have the environment protected, for the benefit of present and future generations through reasonable legislative and other measures that –</li> <li>▪ prevent pollution and ecological degradation;</li> <li>▪ promote conservation; and</li> <li>▪ secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.</li> </ul> <p>Section 24 of the Bill of Rights therefore guarantees the people in South Africa the right to an environment that is not detrimental to human health or well-being, and specifically imposes a duty on the State to promulgate legislation and take other steps that ensure that the right is upheld and that, among other things, that ecological degradation and pollution are prevented.</p> <p>The Constitution emphasises co-operative governance and provides the legal basis for allocating powers to different spheres of government. Schedule 4 (titled "Functional areas of concurrent national and provincial legislative competence") and Schedule 5 (titled "Functional areas of exclusive provincial legislative competence") to the Constitution list the areas within which the tiers of national, provincial (Part A of the Schedule) and local (Part B of the Schedule) government have legislative mandates. In instances where provincial or local legislation are in conflict with national legislation, national legislation prevails.</p> |
| <p style="text-align: center;"><u>National Environmental Management Act (Act 107 of 1998)</u><br/>(“NEMA”)</p> <p><i>Lead Agent: DEAT</i></p>                            | <p>NEMA (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>) provides for co-operative environmental governance through the establishment of national environmental management principles, and procedures for their incorporation into decisions affecting the environment. NEMA emphasizes co-operative governance and assists in ensuring that the environmental right and related rights in the Constitution are protected. NEMA requires the Department of Environmental Affairs and Tourism to be the lead agent in ensuring the effective custodianship of the environment.</p> <p>In particular, the Act provides that sensitive, vulnerable, highly dynamic or stressed ecosystems, such as estuaries require specific attention in management and planning procedures, especially where subjected to significant human resource usage and development. Various of the activities listed in the NEMA Environmental Impact Assessment (“EIA”) Regulations (which came into effect on 3 July 2006) bear on activities within the coastal zone and which require</p>  |

*Legislation*



**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| <b>NATIONAL LEGISLATION</b>   | <b>SHORT DESCRIPTION</b>  |
|---|---|
|   | <i>environmental authorisation before they can proceed.</i>   |
| <p><u><i>Marine Living Resources Act</i></u><br/>(Act 18 of 1998)<br/><u><i>amended 2000</i></u><br/>(“MLRA”)</p> <p><i>Lead Agent: DEAT</i><br/>(Chief Directorate: Marine &amp; Coastal Management)</p>                         | <p>The objectives and principles of the MLRA deal with the utilization, conservation and management of marine living resources, the need to protect whole ecosystems, preserve marine biodiversity and minimize marine pollution, as well as to comply with international law and agreements and to restructure the fishing industry (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>).</p>  |
| <p><u><i>National Environmental Management: Integrated Coastal Management Bill 2006 A &amp; B</i></u><br/>(“Coastal Management Bill”)</p> <p><i>Lead Agent: DEAT</i><br/>(Chief Directorate: Marine &amp; Coastal Management)</p> | <p>In relation to the establishment of resource objectives, the Coastal Management Bill* (<a href="http://www.mcm-deat.gov.za/regulatory/czb.html">www.mcm-deat.gov.za/regulatory/czb.html</a>) aims at establishing a system of integrated coastal and estuarine management in South Africa, including norms, standards and policies, in order to promote the conservation of the coastal environment, and the ecological sustainable development of the coastal zone, to define rights and duties in relation to coastal areas, to determine responsible organs of state in relation to coastal areas and to give effect to South Africa’s international obligations in relation to coastal matters and to provide for related matters</p> <p>* National Environmental Management: Integrated Coastal Management Act (when promulgated)</p>     |
| <p><u><i>National Water Act</i></u><br/>(Act 36 of 1998)<br/>(“NWA”)</p> <p><i>Lead Agent: DWAF</i></p>   | <p>One the important objectives of the NWA are to ensure protection of the aquatic ecosystems of such South Africa’s water resources, including estuaries (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>). To be able to do this effectively, the NWA requires policies to be in place that provide guidance in developing resource quality objectives, i.e. specifying aspects such as freshwater inflow, water quality, habitat integrity, biotic composition and functioning requirements.</p>  |
| <p><u><i>National Environmental Management: Biodiversity Act</i></u><br/>(Act 10 of 2004)<br/>(“Biodiversity Act”)</p> <p><i>Lead Agent: DEAT</i></p>   | <p>The objective of the Biodiversity Act is to provide for the conservation of biological diversity, regulate the sustainable use of biological resources and to ensure a fair and equitable sharing of the benefits arising from the use of genetic resources (<a href="http://www.info.gov.za/documents/acts/2004.htm">www.info.gov.za/documents/acts/2004.htm</a>). The Act states that the state is the custodian of South Africa’s biological diversity and is committed to respect, protect, promote and fulfil the constitutional rights of its citizens. It also recognizes that South Africa is party to, amongst others, the Convention on Biological Diversity, the Convention on Wetlands of International Importance especially Waterfowl Habitat (Ramsar Convention) and the Convention on Migratory Species (Bonn Convention).</p> |
| <p><u><i>National Environmental Management: Protected Areas Act</i></u><br/>(Act 57 of 2003)<br/>(“Protected Areas Act”)</p> <p><i>Lead Agent: DEAT</i></p>   | <p>This Protected Areas Act (<a href="http://www.info.gov.za/documents/acts/2003.htm">www.info.gov.za/documents/acts/2003.htm</a>) provides for: the protection and conservation of ecologically viable areas representative of South Africa’s biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas.</p>  |
| <p><u><i>World Heritage Convention Act</i></u><br/>(Act 49 of 1999)<br/>(“WHCA”)</p> <p><i>Lead Agent: DEAT</i></p>   | <p>The WHCA (<a href="http://www.info.gov.za/documents/acts/1999.htm">www.info.gov.za/documents/acts/1999.htm</a>) provides for the incorporation of the World Heritage Convention into South African Law. It also provides for the recognition and establishment of World Heritage Sites, the establishment of authorities and the granting of additional powers to existing organs of state tasked with the management of World Heritage Sites.</p>   |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| <b>NATIONAL LEGISLATION</b>   | <b>SHORT DESCRIPTION</b>  |
|---|---|
|   | <p>For example, under this Act, Regulations in connection with the Greater St. Lucia Wetland Park (renamed to the iSimangiliso Wetland Park) (No. R.1193, 24 November 2000) (<a href="http://www.info.gov.za/documents/regulations/2000.htm">www.info.gov.za/documents/regulations/2000.htm</a>), were promulgated to create the framework to ensure that the area would be managed, protected and developed in a manner consistent with the World Heritage Convention.</p>   |
| <p><u>National Heritage Resources Act (Act 25 of 1999)</u><br/>("NHRA")</p> <p>Lead Agent: South African Heritage Resources Agency (SAHRA)<br/><a href="http://www.sahra.org.za">www.sahra.org.za</a></p>   | <p>The NHRA (<a href="http://www.info.gov.za/documents/acts/1999.htm">www.info.gov.za/documents/acts/1999.htm</a>) introduces an integrated and interactive system for the managements of national heritage resources (which include landscapes and natural features of cultural significance). One of the important elements of the Act is that it provides the opportunity for communities to participate in the identification, <u>conservation</u> and management of cultural resources.</p>  |
| <p><u>Local Government: Municipal Systems Act</u><br/>(Act 32 of 2000)<br/>("Municipal Systems Act")</p> <p><u>Development Facilitation Act</u><br/>(Act 67 of 1995)<br/>("DFA")</p> <p><u>Local Government Transition Second Amendment Act</u><br/>(Act 97 of 1996)</p> <p>Lead Agent: Department of Provincial and Local Government</p> | <p>The Municipal Systems Act (Chapter 5) deals with Integrated Development Planning (which municipalities are obliged to prepare and to update regularly) (<a href="http://www.info.gov.za/documents/acts/2000.htm">www.info.gov.za/documents/acts/2000.htm</a>). An with Integrated Development Plan (IDP) is intended to encompass and harmonise planning over a range of sectors such as water, transport, land use and environmental management. It requires each local authority to adopt a single, inclusive plan for the development of the municipality which:</p> <ul style="list-style-type: none"> <li>▪ Links, integrates and coordinates plans and take into account proposals for the development of the municipality</li> <li>▪ Aligns the resources and capacity of the municipality with the implementation of the plan</li> <li>▪ Forms the policy framework and general basis on which annual budgets must be based</li> <li>▪ Is compatible with national and provincial development plans and planning requirements that are binding on the municipality in terms of legislation.</li> </ul> <p>The DFA requires the setting of Land Development Objectives (<a href="http://www.info.gov.za/documents/acts/1995.htm">www.info.gov.za/documents/acts/1995.htm</a>) and the principles of this Act have also been incorporated into Chapter 5 of the Municipal Systems Act.</p> <p>The Local Government Transition Second Amendment Act (<a href="http://www.info.gov.za/documents/acts/1996.htm">www.info.gov.za/documents/acts/1996.htm</a>) also requires that all municipalities, local and district councils, draw up IDPs for the integrated development and management of their areas of jurisdiction. The requirements of this act have largely been incorporated in the Municipal Systems Act.</p> |
| <p><u>Environmental Conservation Act 73 of 1989</u><br/>("ECA")</p> <p>Lead Agent: DEAT</p>   | <p>Although many of the provisions of this Act have been repealed by NEMA, the Regulations in terms of the ECA regulating the Outeniqua and the Pennington Sensitive Coastal Areas remain in force until replaced by new regulations.</p>   |

*Legislation*

### ***Management and Control of Activities and Developments (Threats)***

Legislation governing aimed at the management and control of **activities and developments** posing a potential threat to estuaries can broadly be categorised into those related to:

- Land use and infrastructure development
- Water quality and quantity (Water supply/demand and waste)
- Exploitation of living resources.

### ***Land use and infrastructure development***

| <b>NATIONAL LEGISLATION</b>   | <b>SHORT DESCRIPTION</b>  |
|---|---|
| <p><u>National Environmental Management Act</u><br/>(No. 107 of 1998)<br/>("NEMA")</p> <p>Lead Agent: DEAT</p>  | <p>NEMA (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>) provides for co-operative environmental governance through the establishment of national environmental management principles, and procedures for their incorporation into decisions affecting the environment. In 2006, new Environmental Impact Assessment Regulations were promulgated under this Act to regulate procedures and criteria for the submission, perusal, consideration and decision of application for environmental authorisation of specified activities. These regulations are especially pertinent to estuaries as many estuaries are situated within rapidly expanding development nodes along the South African coast and are under tremendous pressure from human activities.</p>   |
| <p><u>Local Government: Municipal Systems Act</u><br/>(Act 32 of 2000)<br/>("Municipal Systems Act")</p> <p><u>Development Facilitation Act</u><br/>(Act 67 of 1995)<br/>("DFA")</p> <p><u>Local Government Transition Second Amendment Act</u><br/>(Act 97 of 1996)</p> <p>Lead Agent: Department of Provincial and Local Government</p> | <p>The Municipal Systems Act (Chapter 5) deals with Integrated Development Planning that provides for the control and management of land-use and infrastructure development (<a href="http://www.info.gov.za/documents/acts/2000.htm">www.info.gov.za/documents/acts/2000.htm</a>).</p> <p>The DFA (<a href="http://www.info.gov.za/documents/acts/1995.htm">www.info.gov.za/documents/acts/1995.htm</a>) requires the setting of Land Development Objectives and the principles of this Act have also been incorporated into Chapter 5 of the Municipal Systems Act.</p> <p>The Local Government Transition Second Amendment Act (<a href="http://www.info.gov.za/documents/acts/1996.htm">www.info.gov.za/documents/acts/1996.htm</a>) also requires that all municipalities, local and district councils, draw up IDPs for the integrated development and management of their areas of jurisdiction. The requirements of this act have largely been incorporated in the Municipal Systems Act.</p> |
| <p><u>National Water Act</u><br/>(No. 36 of 1998)<br/>("NWA")</p> <p>Lead Agent: DWAF</p>   | <p>Estuaries are classified as a water resource under the NWA. Section 21 of this Act (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>) identifies certain land use (e.g. activities resulting in stream-flow reduction such as afforestation and cultivation of crops) and infrastructural developments (e.g. altering the bed, banks, course or characteristics of a watercourse) as 'water uses' (including estuaries) that requires authorisation (licensing) by DWAF.</p>   |
| <p><u>Water Services Act</u><br/>(No. 108 of 1997)</p> <p>Lead Agent: DWAF</p>  | <p>The main aspects of the Water Services Act, relevant to infrastructure development, are to provide for (<a href="http://www.info.gov.za/documents/acts/1997.htm">www.info.gov.za/documents/acts/1997.htm</a>):</p> <ul style="list-style-type: none"> <li>▪ Right of access to basic water supply and basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being</li> <li>▪ Management and control of water services, in general,</li> </ul>   |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| NATIONAL LEGISLATION   | SHORT DESCRIPTION   |
|--|---|
|  | <p>including water supply and sanitation</p> <ul style="list-style-type: none"> <li>Preparation and adoption of Water Services Development Plans (refer to Section 13 of Act) by water services authorities that should form part of IDP's.</li> </ul>  |
| <p><u>National Heritage Resources Act (Act 25 of 1999)</u><br/>("NHRA")</p> <p>Lead Agent: South African Heritage Resources Agency– (SAHRA)<br/><a href="http://www.sahra.org.za">www.sahra.org.za</a></p> | <p>The Act (<a href="http://www.info.gov.za/documents/acts/1999.htm">www.info.gov.za/documents/acts/1999.htm</a>) requires that in areas where there has not yet been a systematic survey to identify conservation-worthy places, a permit is required to alter or demolish any structure older than 60 years. This will apply until a survey has been done and identified heritage resources are formally protected.</p> <p>Anyone who intends to undertake a development must notify the heritage resources authority and if there is reason to believe that heritage resources will be affected, an impact assessment report must be compiled at the developer's cost. Thus developers will be able to proceed without uncertainty about whether work will have to be stopped if a heritage resource is discovered.</p>  |
| <p><u>Conservation of Agricultural Resources Act (No. 43 of 1983)</u><br/>("CARA")</p> <p>Lead Agent: Dept of Agriculture</p>  | <p>The objects of CARA is to provide for the conservation of the natural agricultural resources of South Africa by: the maintenance of the production potential of land; the combating and prevention of erosion and weakening or destruction of the water sources (including estuaries); and the protection of the vegetation and the combating of weeds and invader plants.</p>   |
| <p><u>National Forests Act (No 84 of 1998)</u><br/>("NFA")</p> <p>Lead Agent: DWAF</p>   | <p>The NFA (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>) recognises that natural forests and woodlands form an important part of the environment, and need to be conserved and developed according to the principles of sustainable management. A "Natural forest" is defined as any group of indigenous trees whose crowns are largely contiguous and applies to riparian vegetation in the CFR. A licence is required to disturb natural forest which poses opportunity to develop a licence framework for estuarine forest (N Scarr, Manager: Coastal Zone Management Department Of Economic Affairs, Environment &amp; Tourism Province of the Eastern Cape, pers comm.)</p>   |
| <p><u>Mineral and Petroleum Resources Development Act (No. 28 of 2002)</u><br/>("MPRDA")</p> <p>Lead Agent: Depart of Minerals and Energy</p>  | <p>The MPRDA (<a href="http://www.info.gov.za/documents/acts/2002.htm">www.info.gov.za/documents/acts/2002.htm</a>) contains the statutory requirements regarding the enforcing of environmental protection and management of mining impacts, including sand and coastal mining. The Act requires Environmental Management Programmes (EMP) that identify a mine's impact on the environment and provide a clear programme on how these will be managed, based on an Environmental Impact Assessment (EIA). To ensure compliance with environmental issues, the act requires consultation with each department charged with administration of any law that relates to any matter affecting the environment before an EMP may be approved.</p>   |
| <p><u>Seashore Act (No. 21 of 1935)</u><br/><u>Amended 1993</u></p> <p>Lead Agent: DEAT</p>  | <p>The Sea-shore Act (<a href="http://www.polity.org.za/pdf/Sea-ShoreAA190.pdf">www.polity.org.za/pdf/Sea-ShoreAA190.pdf</a>) provides that ownership of the sea-shore (which includes the water and land between the low-water mark and the high-water mark in those estuaries that fall within the definition of "tidal lagoons" and/or "tidal rivers") and the sea, vests in the State President insofar as it was not privately owned before the commencement of the Act (which occurred on 10 April 1935). All of the provisions of the Act have been assigned to the four coastal provinces under section 235(8) of the Constitution, except in so far as the Act regulates the sea-shore and the sea within ports or harbours (Proclamation R27/16346/6 dated 7 April 1995) (Smith and Cullinan, 2000). This Act is to be replaced by the National Environmental Management: Integrated Coastal Management Act (when promulgated – the latter draft legislation remains in the form of a</p> |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| NATIONAL LEGISLATION  | SHORT DESCRIPTION   |
|---|---|
|   | Parliamentary Bill at the date of this report).   |
| <p><u>National Environmental Management: Integrated Coastal Management Bill 2006 A &amp; B</u><br/>(“Coastal Management Bill”)</p> <p>Lead Agent: DEAT<br/>(Chief Directorate: Marine &amp; Coastal Management)</p> | <p>Chapter 2 of the Coastal Management Bill* (<a href="http://www.mcm-deat.gov.za/regulatory/czb.html">www.mcm-deat.gov.za/regulatory/czb.html</a>) defines and specifies different areas that fall within the coastal zone, such as coastal public property, coastal buffer zones, coastal access land and coastal setback lines. Chapter 3 of the Bill deals with the determination and adjustment of coastal area boundaries. These aspects need to be taken into account in land-use and infrastructure development issues in coastal areas, which include estuaries.</p> <p>Chapter 4 of the Bill deals specifically with estuaries and requires that DEAT (together with DWAF) prescribes a National Estuarine Management Protocol for South Africa and that estuarine management plans be developed and implemented for each estuary in accordance with the Protocol. The Bill also contains specific requirements in terms of the Protocol and the Management Plans.</p> <p>* National Environmental Management: Integrated Coastal Management Act (when promulgated)</p> |

**Water Quantity and Quality (Water supply/demand and waste)**

| NATIONAL LEGISLATION  | SHORT DESCRIPTION  |
|---|--|
| <p><u>National Environmental Management Act</u><br/>(No. 107 of 1998)<br/>(“NEMA”)</p> <p>Lead Agent: DEAT</p>  | <p>NEMA (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>) provides for co-operative environmental governance through the establishment of national environmental management principles, and procedures for their incorporation into decisions affecting the environment. In 2006, the new Environmental Impact Assessment Regulations have been promulgated under this Act. Waste disposal activities are also scheduled activities under these regulations.</p>  |
| <p><u>National Water Act</u><br/>(No. 36 of 1998)<br/>(“NWA”)</p> <p>Lead Agent: DWAF</p>   | <p>Estuaries are classified as a water resource under this Act. Section 21 of the NWA (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>) classifies a number of activities related to water supply/demand and waste disposal (from land-based activities) as ‘water uses’ that requires authorisation (licensing) by DWAF.</p>   |
| <p><u>Marine Living Resources Act</u><br/>(Act 18 of 1998)<br/><br/><u>amended 2000</u><br/>(“MLRA”)</p> <p>Lead Agent: DEAT<br/>(Chief Directorate: Marine &amp; Coastal Management)</p> | <p>This MLRA (<a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a>) governs activities in fishing harbours, e.g. Laaiplek (Berg Estuary), including harbour pollution. The Act also gives a mandate to the Minister to promulgate Regulation towards marine pollution.</p>   |
| <p><u>Marine Pollution (Control and Civil Liability) Act</u><br/>(No. 6 of 1981)</p> <p>Lead Agents: Depart of Transport (prevention) and DEAT (combating)</p>                            | <p>The Marine Pollution (Control and Civil Liability) Act provides for the protection of the marine environment from pollution by oil and other harmful substances; the prevention and combating of such pollution; and the determination of liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers and offshore installations (<a href="http://www.uctshiplaw.com/shiple.htm">www.uctshiplaw.com/shiple.htm</a>). It prohibits the discharge of oil from ships, tankers and offshore installations, but provides exemptions in the case of, for example, the oil being released as a result of damage and steps being taken as</p> |

*Legislation*



**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| NATIONAL<br>LEGISLATION  | SHORT DESCRIPTION  |
|--|--|
|  | soon as practicable to stop or reduce the escape of oil. The Act provides reporting procedures for discharges of any harmful substance.  |
| <p><u>Water Services Act</u><br/>(No. 108 of 1997)</p> <p>Lead Agent: DWAF</p>   | <p>The main aspects of the Water Services Act (<a href="http://www.info.gov.za/documents/acts/1997.htm">www.info.gov.za/documents/acts/1997.htm</a>), relevant the management of water quantity and quality in estuaries, are to provide for:</p> <ul style="list-style-type: none"> <li>▪ Right of access to basic water supply and basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being</li> <li>▪ Management and control of water services, in general, including water supply and sanitation</li> <li>▪ Regulation of industrial use of water, both in terms of use and disposal of effluent (possible overlap with section 21 of the NWA)</li> <li>▪ Preparation and adoption of Water Services Development Plans by water services authorities that typically form part of IDP's.</li> </ul> |
| <p><u>Dumping at Sea Control Act</u><br/>(No.73 of 1980)</p> <p><u>Amended 1995</u></p> <p>Lead Agent: DEAT<br/>(Marine &amp; Coastal Management)</p>                                    | <p>The Dumping at Sea Control Act provides for the control of dumping of substances in the sea (including estuaries) and gives legal effect to the London Convention in South Africa.</p> <p>This Act will be repealed by the National Environmental Management: Integrated Coastal Management Act (when promulgated).</p>   |
| <p><u>National Ports Act</u><br/>(No. 12 of 2005)<br/>1 &amp; 2</p> <p>Lead Agent: Department of Transport and National Ports Authority (NPA)</p>  | <p>Environmental aspects in commercial ports, e.g. East London and Durban (located in estuaries) are governed by the provisions in the National Ports Act (<a href="http://www.info.gov.za/documents/acts/2005.htm">www.info.gov.za/documents/acts/2005.htm</a>) which repealed the Legal Succession to the SA Transport Services Act (No. 9 of 1989).</p>   |
| <p><u>National Health Act</u><br/>(No. 61 of 2004)<br/>("NHA")</p> <p>Lead Agent: Delegated to Provincial and Local authorities from Department of Health</p>                            | <p>The responsibility to render environmental health services under the NHA has been delegated to metropolitan and district councils as from 1 July 2004.</p> <p>Every metropolitan and district municipality must ensure that appropriate municipal health services are effectively and equitably provided in their respective areas. These include (insofar as it influences human health, except in ports):</p> <ul style="list-style-type: none"> <li>▪ water quality monitoring</li> <li>▪ waste management</li> <li>▪ environmental pollution control.</li> </ul> <p>The responsibilities of metropolitan and district municipalities as stated above do not apply in respect of ports.</p>  |
| <p><u>National Environmental Management: Integrated Coastal Management Bill</u><br/>A &amp; B<br/>("Coastal Management Bill")</p> <p>Lead Agent: DEAT<br/>(Chief Directorate: Marine</p> | <p>Chapter 8 of the Coastal Management Bill* (<a href="http://www.mcm-deat.gov.za/regulatory/czb.html">www.mcm-deat.gov.za/regulatory/czb.html</a>) contains exclusive provisions dealing with Marine and Coastal Pollution Control, specifically addressing 'Discharge of Effluent into coastal waters' (administered in collaboration with DWAF) and 'Incineration and Dumping at sea' (e.g. dredge spoil dumping).</p>  |

*Legislation*



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| <b>NATIONAL<br/>LEGISLATION</b>   | <b>SHORT DESCRIPTION</b>  |
|---|---|
| <i>&amp; Coastal Management)</i>  | * National Environmental Management: Integrated Coastal Management Act (when promulgated)   |
| <u>Seashore Act</u><br>(No. 21 of 1935)<br><br><u>Amended 1993</u><br><br><i>Lead Agent: DEAT</i>   | The Sea-shore Act ( <a href="http://www.polity.org.za/pdf/Sea-ShoreAA190.pdf">www.polity.org.za/pdf/Sea-ShoreAA190.pdf</a> ) states that ownership of the sea-shore (which includes the water and land between the low-water mark and the high-water mark in those estuaries that fall within the definition of tidal lagoons and/or tidal rivers) and the sea is vested in the State President insofar as it was not privately owned before the commencement date of the Act. In terms of section 10 of the Sea-shore Act, the Minister may make regulations, or by notice in the Gazette authorize any local authority, in regard to any portion of the sea-shore and the sea situated within or adjoining the area of jurisdiction of such local authority, with his approval, to make regulations, not inconsistent with this Act, for the prevention or regulation of the depositing or the discharging upon the sea-shore or in the sea of offal, rubbish or anything liable to be a nuisance or danger to health. This Act is to be replaced by the National Environmental Management: Integrated Coastal Management Act (when promulgated) when such Act is promulgated and enters into effect. |
| <u>Draft National<br/>Environmental<br/>Management: Waste<br/>Management Bill (2006)</u><br>(“Waste Management<br>Bill”)<br><br><i>Lead Agent: DEAT</i> | The purpose of the Waste Management Bill is to reform the law regulating waste management in order to: protect the health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development; to provide for national norms and standards for regulating the management of waste by all spheres of government; and for specific waste management measures.   |

### **Exploitation of Living Resources**

| <b>LEGISLATION</b>   | <b>SHORT DESCRIPTION</b>   |
|--|--|
| <u>Marine Living Resources<br/>Act</u><br>(Act 18 of 1998)<br><br><u>amended 2000</u><br>(“MLRA”)<br><br><i>Lead Agent: DEAT<br/>(Marine &amp; Coastal<br/>Management)</i> | The objectives and principles of the MLRA deal with the utilization, conservation and management of marine living resources (including estuarine resources) ( <a href="http://www.info.gov.za/documents/acts/1998.htm">www.info.gov.za/documents/acts/1998.htm</a> ). Marine living resources includes any aquatic plant or animal, whether piscine or not, and any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile and marine mammals and includes their eggs, larvae and all juvenile stages, but does not include sea birds and seals.<br><br>Orderly control and development of mariculture is also regulated under this Act (Section 18 and 27). |
| <u>Animal Health Act</u><br>(Act 7 of 2002)<br><br><i>Lead Agent: Dept of<br/>Agriculture</i>  | The Animal Health Act ( <a href="http://www.info.gov.za/documents/acts/2002.htm">www.info.gov.za/documents/acts/2002.htm</a> ) may be come relevant to estuarine management in instances where systems are being utilised for mariculture activities.  |

## **2.4 Important Provincial and Local Authority Legislation**

Historically, the powers to control coastal land use and infrastructure development were delegated to provincial and local governments, although national government was still responsible for the production and oversight of enabling national legislation. On the other hand, the management and control of water quantity and quality (water supply/demand and waste) and exploitation of living resources was the responsibility of national

*Legislation*

## Legislation pertaining to Management of Environmental Threats within Estuaries

government. However, provincial and local governments can issue subordinate legislation (provincial act, ordinances or by-laws) that regulate specific activities within their respective jurisdictions so as to enforce national legislation.

There are mainly two coastal provinces within the Cape Floristic Region (CFR), namely:

- Province of Western Cape
- Province of Eastern Cape.

Schedule 4 (titled "Functional areas of concurrent national and provincial legislative competence") and 5 (titled "Functional areas of exclusive provincial legislative competence") to the Constitution lists the areas within which Provincial (Part A) and Local (Part B) government have legislative mandates. However, in instances where provincial or local legislation are in conflict with national legislation, national legislation prevails.

**Province of Western Cape ([www.enviroleg.co.za/provinces.htm](http://www.enviroleg.co.za/provinces.htm)) (also limited Local Legislation):**

| PROVINCIAL<br>LEGISLATION  | SHORT DESCRIPTION   |
|--|---|
| <u>Municipal Ordinance<br/>(Cape)<br/>(No. 20 of 1974)</u><br><br><i>Lead Agent Western<br/>Cape Department of<br/>Local Government and<br/>Housing*</i>   | <p>The Ordinance grants local authorities in the province of the Western Cape the power 'to drain storm water into any natural water course'. To this end, a number of local authorities have passed by-laws. The Ordinance consolidated and amended the laws relating to municipalities, village management boards and local boards, and was assigned to the Provinces in Proclamation 111 in Government Gazette 14738 of 6 March 1992. The Ordinance deals with, inter alia, sanitation, water supply, advertising signs and with by-laws relating to noise abatement, water supply, drainage, sewerage and sanitation, water and nuisances. However, the ordinance deals largely with laws at local level. In view of significant legislative charges since 1994, this law may be considered in need of repeal.</p> <p>* Although the provisions of the Municipal Ordinance suggest that it would logically fall to be administered by the Department of Local Government and Housing, this aspect could not be confirmed.</p> |
| <u>Land Use Planning<br/>Ordinance, 1985<br/>(Ordinance 15 of 1985,<br/>as amended in 2004)</u><br>("LUPO")<br><br><i>Lead Agent: Provincial<br/>Depart Environment<br/>Affairs &amp; Development<br/>Planning (DEADP)</i> | <p>LUPO (<a href="http://www.wcpp.gov.za/Documents/act.asp">www.wcpp.gov.za/Documents/act.asp</a>) provides for decision-making regarding land use and planning issues, including applications for rezoning, subdivision and the amendment of relevant structure and/or spatial plans promulgated in terms of LUPO. Most planning applications received by the local authorities and/or the provincial planning and environmental department are in terms of this Ordinance and include applications for departure, rezoning or subdivision, and appeals against planning decisions taken by a municipality (which appeals are regulated by section 44 of LUPO).</p>  |
| <u>Western Cape Housing<br/>Development Act<br/>(No. 6 of 1999)</u><br><br><i>Lead Agent: Unknown</i>  | <p>The Western Cape Housing Development Act determines general principles applicable to housing in the province of the Western Cape and defines the role of the provincial and local spheres of government in housing development (<a href="http://www.wcpp.gov.za/Documents/act.asp">www.wcpp.gov.za/Documents/act.asp</a>). It also needs to ensure that housing development is integrated with all other facets of development in a holistic way.</p>  |
| <u>Western Cape Planning<br/>and Development Act<br/>(No. 7 of 1999)</u><br><br><i>Lead Agent: DEADP</i>   | <p>The Western Cape Planning and Development Act lays down guidelines for the future spatial development in the Western Cape province in such a way as will most effectively promote the order of the area as well as the general welfare of the community concerned (<a href="http://www.wcpp.gov.za/Documents/act.asp">www.wcpp.gov.za/Documents/act.asp</a>).</p>  |
| <u>Cape Nature</u>   | <p>This Act (<a href="http://www.wcpp.gov.za/Documents/act.asp">www.wcpp.gov.za/Documents/act.asp</a>) allowed for the establishment of</p>   |

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| PROVINCIAL<br>LEGISLATION  | SHORT DESCRIPTION  |
|--|--|
| <u><a href="#">Conservation Board Act<br/>(No. 15 of 1998)</a></u><br><br><i>Lead Agent: DEADP</i>   | <p>the Cape Nature conservation Board (or Cape Nature). The objectives of the Boards are to (a) to promote and ensure nature conservation and related matters in the Province; (b) to render services and provide facilities for research and training in connection with nature conservation and related matters in the Province, and (c) in pursuing the objects set out in paragraphs (a) and (b), to generate income, within the framework of any applicable policy determined by the responsible Minister or the Provincial Cabinet.</p>  |
| <u><a href="#">Cape Nature and<br/>Conservation Ordinance<br/>(No. 19 of 1974, as<br/>amended in 1999)</a></u><br><br><i>Lead Agent: Cape<br/>Nature</i> | <p>The Cape Nature Conservation Board Act (<a href="http://www.wcpp.gov.za/Documents/act.asp">www.wcpp.gov.za/Documents/act.asp</a>) allowed for the establishment of the Cape Nature Conservation Board (or CapeNature as that body is more commonly known). The objectives of the Board are: (a) to promote and ensure nature conservation and related matters in the Province; (b) to render services and provide facilities for research and training in connection with nature conservation and related matters in the Province; and (c) in pursuing the objects set out in paragraphs (a) and (b), to generate income, within the framework of any applicable policy determined by the responsible Minister or the Provincial Cabinet.</p>   |
| <u><a href="#">Nature and<br/>Environmental<br/>Conservation<br/>Ordinance<br/>(No. 19 of 1974)</a></u><br><br><i>Lead Agent: Cape<br/>Nature</i>        | <p>Although this Ordinance applies principally to terrestrial land, by analogy it can be extended to estuaries because it refers to inland waters (which in turn include tidal rivers or estuaries).</p>   |
| <u><a href="#">City of Cape Town By-<br/>laws<br/>(Local legislation)</a></u><br><br><i>Lead Agent: Cape Town<br/>Metropolitan Council</i>               | <p>By-laws issued by the City of Cape Town that may be have to be considered or are of relevance in the management of estuaries situated within the jurisdictional boundaries of the latter metropolitan authority include those regulating (<a href="http://www.capetown.gov.za/by-laws/bylaw_frameset.asp">www.capetown.gov.za/by-laws/bylaw_frameset.asp</a>):</p> <ul style="list-style-type: none"> <li>▪ <u><a href="#">Air Pollution Control</a></u></li> <li>▪ <u><a href="#">Dumping and Littering</a></u></li> <li>▪ <u><a href="#">Environmental Health</a></u></li> <li>▪ <u><a href="#">Limitations and/ or Restrictions on the Use of Water</a></u></li> <li>▪ <u><a href="#">Storm water Management</a></u></li> <li>▪ <u><a href="#">Water</a></u></li> <li>▪ <u><a href="#">Wastewater</a></u></li> </ul> <p>The City of Cape Town also has an Integrated Metropolitan Environmental Policy (IMEP) which forms the foundation for an environmental management strategy for the City of Cape Town (<a href="http://www.capetown.gov.za/">www.capetown.gov.za/</a>). The policy was officially adopted by the City of Cape Town 2001.</p> |

**Province of Eastern Cape ([www.enviroleg.co.za/provinces.htm](http://www.enviroleg.co.za/provinces.htm)):**

| PROVINCIAL<br>LEGISLATION   | SHORT DESCRIPTION   |
|---|---|
| <u><a href="#">Municipal Ordinance (Cape)<br/>(No. 20 of 1974)</a></u><br><br><i>Lead Agent: Eastern Cape<br/>Department of Housing and Local<br/>Government and Traditional<br/>Affairs*</i> | <p>Grants local authorities in the province of the Western Cape the power 'to drain storm water into any natural water course'. To this end, a number of local authorities have passed by-laws.</p> <p>* Although the provisions of the Municipal Ordinance suggest that it would logically fall to be administered by the Department of Housing, this aspect could not be confirmed.</p> |
| <u><a href="#">Nature and Environmental</a></u>   | <p>Although this Ordinance applies principally to terrestrial land, by</p>  |

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| <b>PROVINCIAL<br/>LEGISLATION</b>   | <b>SHORT DESCRIPTION</b>   |
|---|--|
| <u>Conservation Ordinance<br/>(No. 19 of 1974)</u><br><br><i>Lead Agent: Cape Nature</i>  | <i>analogy it can be extended to estuaries because it refers to inland waters (which in turn include tidal rivers or estuaries).</i>   |
| <u>Ciskei Nature Conservation Act<br/>(Act 10 of 1987)</u><br><br><i>Lead Agent: Provincial<br/>Department Of Economic Affairs,<br/>Environment &amp; Tourism (DEAET)</i> | <i>There is presently no Eastern Cape conservation ordinance what we have are the old Cape Ordinance, the Ciskei Nature Conservation Act, and the Transkei Environmental Conservation Decree in force in their original areas of jurisdiction (N Scarr, Manager: Coastal Zone Management, DEAET, Province of the Eastern Cape, pers comm.)</i>   |
| <u>Transkei Environmental<br/>Conservation Decree 9 of 1992</u><br><br><i>Lead Agent: DEAET</i>   | <i>There is presently no Eastern Cape conservation ordinance what we have are the old Cape Ordinance, the Ciskei Nature Conservation Act, and the Transkei Environmental Conservation Decree in force in their original areas of jurisdiction (N Scarr, Manager: Coastal Zone Management, DEAET, Province of the Eastern Cape, pers comm.)</i>   |
| <u>Eastern Cape Environmental<br/>Conservation Bill<br/>(2002)</u><br><br><i>Lead Agent: DEAET</i>  | <p><i>The Eastern Cape Environmental Conservation Bill aims to:</i><br/> <a href="http://www.ecprov.gov.za/contentcategory.asp?id=20&amp;menuid=182&amp;mainmenuid=180">www.ecprov.gov.za/contentcategory.asp?id=20&amp;menuid=182&amp;mainmenuid=180</a></p> <ul style="list-style-type: none"> <li>▪ <i>Provide for the consolidation of the laws relating to environmental conservation and the control of problem wild animals applicable in the Province, such as the Sea-shore Act (1935), Mountain Catchment Areas Act (1970), Environmental Conservation Act (1989) and the National Environmental Management Act (1998);</i></li> <li>▪ <i>Provide for Provincial coastal management; and</i></li> <li>▪ <i>Regulate air quality and waste management in the Province.</i></li> </ul> |
| <u>Protected Areas Bill (Eastern<br/>Cape) (2002)</u><br><br><i>Lead Agent: DEAET</i>   | <p><i>The Protected Areas Bill aims to provide for:</i><br/> <a href="http://www.ecprov.gov.za/contentcategory.asp?id=20&amp;menuid=182&amp;mainmenuid=180">www.ecprov.gov.za/contentcategory.asp?id=20&amp;menuid=182&amp;mainmenuid=180</a></p> <ul style="list-style-type: none"> <li>▪ <i>Declaration of Provincial protected areas;</i></li> <li>▪ <i>Establishment of Provincial Parks Board and the appointment of members thereof; and</i></li> <li>▪ <i>Protection of wildlife in the Province.</i></li> </ul>  |

### 3. Key Legislation pertaining to Management & Control of Specific Activities and Developments in and around Estuaries

The management and control of activities within and around estuaries require site-specific resource objectives against which to assess and test for compliance. In the case of estuaries, the following are considered as the key legislative instruments that currently need to be taken into account in the setting of resource objectives:

#### KEY LEGISLATION

Chapter 3, Part 3 of the NWA requires Classification and Resource Quality Objectives to be determined for all water resources, including estuaries. The Water Resource Protection Policy (under this Act) provides detailed guidelines and procedures for the classification (i.e. predefined health status) and the setting of Resource Quality Objectives for the protection of aquatic ecosystems (including objectives for water quantity, water quality, habitat integrity and biotic integrity).

Chapter 4 of the MLRA (as amended in 2000) deals with the declaration of Marine Protected Areas and which empowers the Minister (DEAT) to declare an area to be a Marine Protected Area where various activities are prohibited. These are stipulated in the Declaration of Areas as Marine Protected Areas (No R.1429, 29 December 2000) promulgated under the Act ([www.info.gov.za/documents/regulations/2000.htm](http://www.info.gov.za/documents/regulations/2000.htm)).

Chapter 3 of the Protected Areas Act describes the different types of protected areas that can be declared, which may also apply to estuaries.

Chapter 5 of the Municipal Systems Act deals with integrated development planning (IDP) that, amongst others, the social and economic objectives for a particular area. The Municipal Planning and Performance Management Regulations (Government Notice R.796, 24 August 2001) ([www.info.gov.za/documents/regulations/2001.htm](http://www.info.gov.za/documents/regulations/2001.htm)) promulgated in terms of this Act describe the content requirements of IDPs. The regulations, for example state that the Spatial Development Framework, reflected in the municipality's IDP, must 'contain a strategic assessment of the environmental impact of the spatial development framework'.

Section 26 of Environmental Conservation Act. Regulations on Sensitive Coastal Areas promulgated under this Act remains in force until replaced with new regulations under NEMA. Currently there are two useful management tools relating to legislation in Sensitive Coastal Areas, namely Sensitive Coastal Areas Regulations.

### 3.1 Land use and Infrastructure Development

Details on key legislation specifically important to the management and control of land use and infrastructure development are listed below:

| ACTIVITIES AND/OR DEVELOPMENTS  | KEY LEGISLATION   |
|---|---|
| <p>Execution, construction or upgrading of activities and developments in and around estuaries, such as:</p> <ul style="list-style-type: none"> <li>• Marinas, (fishing) harbours and structures below high-water mark (e.g. bank stabilisation, jetties, launching sites, tidal pools, parking lots, control gates, permit offices)</li> <li>• Bridges, roads, railways and airfields</li> <li>• Dams, reservoirs, levees or weirs</li> <li>• Canals, channels and water-transfer schemes</li> <li>• Public and private amenities and resorts</li> <li>• Sewage treatment works and solid waste dump sites</li> <li>• Rezoning for residential or industrial development in and around estuaries</li> <li>• Altering the bed, banks, course or characteristics of a watercourse (e.g. mouth breaching, bank stabilisation, storm water outlet structures, dredging, dredge-spoil dumping, sedimentation or erosion issues, dune stabilisation)</li> <li>• Reclamation of land below the high-water mark of the sea and in inland waters</li> <li>• Salt works (e.g. in flood plains and salt marsh areas)</li> <li>• Other (e.g. electricity generation, nuclear reactors, cableways, communication network structures and access roads, racing tracks, industrial and military facilities)</li> </ul> | <p><a href="#"><u>Section 24 of NEMA</u></a> requires that potential impacts on the environment, socio-economic conditions and cultural heritage must be investigated and assessed prior to implementation and reported to the authority charged with authorizing, permitting or otherwise allowing the implementation of an activity as listed in the NEMA EIA Regulations. The NEMA EIA Regulations (respectively contained in <a href="#"><u>Government Notices R385, R386 &amp; R387</u></a>) were promulgated under Chapter 5 of the Act (replacing previous EIA regulations, 1998 that were promulgated under the Environmental Conservation Act). They commenced with effect from 3 July 2006. Activities that require a Basic Assessment, as well as the competent authorities responsible for administering these applications, are listed in <a href="#"><u>Government Notice No. R386</u></a>, and include activities such as dredging, excavation, infilling and removal of soil. <a href="#"><u>Government Notice No. R387</u></a> lists activities that require Scoping and Environmental Assessment (i.e. a 'full EIA') and include, for example, development activities which exceed 20 hectares or more; and construction or earth-moving activities in the sea or within 100 metres inland of the high-water mark of the sea (which defined term includes estuaries).</p> <p>A more detailed list of activities is presented in Regulations (<a href="#"><u>Government Notice No. R386</u></a> and <a href="#"><u>No. R387</u></a> - dated 21 April 2006 and effective from 3 July 2006) (<a href="http://www.info.gov.za/documents/regulations/2006.htm">www.info.gov.za/documents/regulations/2006.htm</a>).</p> <p>Operational management procedures and actions are typically specified in Environmental Management Plans.</p> <p><a href="#"><u>Section 21 of the NWA</u></a> also lists a number of activities that are classified as a water use and that require authorisation from DWAF. A detailed list of these activities is provided in Section 21 of the Act. Specific operational management procedures are specified in individual license Agreements.</p> <p><a href="#"><u>Chapter 5 of the Municipal Systems Act</u></a> requires Provincial and Local Authorities to develop Integrated Development Plan (IDP) for areas under their jurisdiction. Construction and upgrading of these activities will therefore also need to take into account requirements and stipulates of such IDP (<a href="http://www.info.gov.za/documents/regulations/2001.htm">www.info.gov.za/documents/regulations/2001.htm</a>). The <a href="#"><u>Municipal Planning and Performance Management Regulations</u></a> (2001) specify requirements of IDPs. The regulations, for example state that the Spatial Development Framework reflected in the municipality's IDP must 'contain a strategic assessment of the environmental impact of the spatial development framework'.</p> <p><a href="#"><u>Section 12 of the Water Services Act</u></a> requires Water Services Authorities (Municipalities) to prepare <a href="#"><u>Water Services Plans</u></a> (WSP) as part of IDPs. Details on the content of WSP are provided in <a href="#"><u>Section 13 of the Act</u></a>.</p> |



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| <b>ACTIVITIES AND/OR DEVELOPMENTS</b>  | <b>KEY LEGISLATION</b>   |
|--|--|
| associated with explosives or ammunition and transport routes, structures and facilities involving hazardous substances).  | <u>Chapters 2 &amp; 3 of the Coastal Management Bill</u> provides specification for the demarcation of different areas within the coastal zone, e.g. coastal buffer zones and set backlines. Chapter 7 provides specification of activities that may/may not be undertaken in these demarcated coastal areas. Specific operational management procedures will most likely be specified through Coastal Management Programmes and Estuarine Management Plans.   |
| <p>Agricultural activities in and around estuaries, including:</p> <ul style="list-style-type: none"> <li>• Livestock grazing</li> <li>• Cultivation of crops</li> <li>• Husbandry involving invasive alien species (plants or animals)</li> </ul> | <p><u>Section 6 of the Conservation of Agricultural Resources Act</u> gives the Minister of Agriculture the power to prescribe control measures to achieve the objectives of the Act which shall be complied with by land users to whom they apply. Such control measures have been specified in the <u>Conservation of Agricultural Resources Act Regulations</u> (1984 as amended in 1985 &amp; 2001) (<a href="http://www.nda.agric.za/">www.nda.agric.za/</a>).</p> <p>Where agricultural practices include activities classified as a water use under <u>Section 21 of the NWA</u> or a listed activity under the EIA Regulations (<u>Section 24 of NEMA</u>) (e.g. altering the bank of an estuary) it will require authorisation from DWAF (see above) and be subject to an EIA.</p> <p><u>Part 8 of the NWA</u> also states that a water use may be subject to an EIA (under NEMA).</p>  |
| Introduction of alien vegetation   | <p><u>Section 6 of the Conservation of Agricultural Resources Act</u> gives the Minister of Agriculture the power to prescribe control measures to achieve the objectives of the Act which shall be complied with by land users to whom they apply. Such control measures have been specified in the <u>Conservation of Agricultural Resources Act Regulations</u> (1984 as amended in 1985 &amp; 2001) (<a href="http://www.nda.agric.za/">www.nda.agric.za/</a>).</p> <p><u>Section 21 of the NWA</u> classifies activities resulting in stream flow reduction, (e.g. presence of alien vegetation) as a water use that requires authorisation from DWA. More details on such activities are provided in Section 21.</p> <p><u>Part 8 of the NWA</u> also states that a water use may be subject to an EIA (under NEMA).</p>   |
| Recreational activities (e.g. boating, swimming, amenities, footpaths, bird watching etc)  | <p><u>Section 21 of the NWA</u> classifies the use of a water resource for recreational purposes as water use that requires authorisation from DWAF. DWAF is in the process of drafting <u>Regulations for recreational use of water resource</u> – see <a href="http://www.dwaf.gov.za/Documents/Other/RMP/rwum.asp">www.dwaf.gov.za/Documents/Other/RMP/rwum.asp</a></p> <p><u>Section 32 of the National Health Act</u> requires that every metropolitan and district municipality must ensure that appropriate municipal health services are effectively and equitably provided in their respective areas. This is understood to include water quality monitoring (in terms of health risks) in water resources (e.g. estuaries) used for recreational purposes.</p> <p><u>Section 10 of the Seashore Act</u> is currently used to control recreational boating activities in estuaries with powers delegated to Provincial Authorities (this Act will be repealed by the ICMB)</p> <p><u>Section 24(4) of NEMA</u>, through the <u>Off Road Vehicle Regulations</u></p> |

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| <b>ACTIVITIES AND/OR DEVELOPMENTS</b>            | <b>KEY LEGISLATION</b>  |
|--|---|
|  | (2001, <a href="#">amended</a> 2004) ( <a href="http://www.mcm-deat.gov.za/4x4/">www.mcm-deat.gov.za/4x4/</a> ) regulate the licensing and control of recreational boat launching sites   |
| Off-road vehicles access in coastal areas        | <a href="#">Section 24(4) of NEMA</a> , through the <a href="#">Off-road Vehicle Regulation</a> (2001 as <a href="#">amended</a> 2004) ( <a href="http://www.mcm-deat.gov.za/4x4/">www.mcm-deat.gov.za/4x4/</a> ) regulates off-road vehicle access in coastal areas.   |
| Mining (e.g. sand winning, diamond and titanium) | <a href="#">Section 22 of the Mineral &amp; Petroleum Resource Development Act</a> stipulates that a license is required to obtain the right to mine. If an application to obtain mining rights is excepted, the applicant is required to conduct and EIA (in accordance with <a href="#">Section 24 of NEMA</a> ) and needs to provide an Environmental Management Programme ( <a href="#">Section 38 of this Act</a> ). |
| Mariculture activities                           | See the <a href="#">Marine Living Resources Act</a>   |

### 3.2 Water Quantity and Quality (Water supply/demand and waste)

The activities and developments that influence the quantity of freshwater inflow to estuaries, and those potentially impacting on water quality, are largely governed by DEAT under the National Environmental Management Act (No. 107 of 1998), and by DWAF under the National Water Act (No. 36 of 1998) (NWA) and the Water Services Act (No. 108 of 1997).

More recently, proposed legislation such as the National Environmental Management: Integrated Coastal Bill (2006) (ICMB) and the National Environmental Management: Waste Management Bill (2006) (WMB), also include sections related to pollution (or water quality) management. Legislation linked to National Environment Management is administered by the Department of Environmental Affairs and Tourism. This may, therefore, lead to a situation where both Departments would have concurrent powers to manage pollution (or water quality) in estuaries. DEAT is currently responsible for the management and control of dumping activities at sea (e.g. dumping of dredge spoil), as governed under the Dumping at Sea Control Act (No. 73 of 1980)

Schedules 4 & 5 of the Constitution of the Republic of South Africa (Act 108 of 1996), also grant local authorities the power to promulgate legislation (principally in the form of by-laws) to regulate issues affecting water quantity and/or quality e.g. by-laws regulating storm water management systems, waste disposal and environmental health services (the latter is also a requirement under the National Health Act (No. 61 of 2004)). It is, however, understood that such by-laws must be in accordance with national and provincial legislation.

Details on key legislation that are of importance in the management of water quality and quantity activities and developments are discussed below:

| <b>ACTIVITIES AND/OR DEVELOPMENTS</b>  | <b>KEY LEGISLATION</b>   |
|--|--|
| Taking water from a water resource (surface and ground water abstraction) or storing water | <a href="#">Section 21 of the NWA</a> classifies these activities (largely influencing freshwater flows) as a water use that requires authorisation from DWA. More details on such activities are provided in Section 21. Operational management procedures and actions are typically specified in the individual License Agreements. Operational management procedures and actions are typically specified in the individual License Agreements |
| Impeding or diverting flow of water in a watercourse (e.g. inter-basin transfers)          |  |

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**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| ACTIVITIES AND/OR DEVELOPMENTS   | KEY LEGISLATION  |
|--|--|
| Activities resulting in stream flow reduction (e.g. afforestation, cultivated land and alien vegetation)   | Under <a href="#">Section 39 of the NWA</a> , DWAF has promulgated <a href="#">General Authorisation</a> (2004) in terms of which certain activities, classified as water a use, exempts a water user from applying for a license ( <a href="http://www.dwaf.gov.za/Documents">www.dwaf.gov.za/Documents</a> ).  |
| Irrigating land with wastewater generated through an industrial activity or a water treatment works  | <a href="#">Part 8 of the NWA</a> also states that a water use may be subject to an EIA (under NEMA).  |
| Modifying atmospheric precipitation  | <a href="#">Section 12 of the Water Services Act</a> requires Water Services Authorities (Municipalities) to prepare <a href="#">Water Services Plans</a> (WSP) as part of IDPs.   |
| Power generation activity altering the flow regime of a water resource   | Details on the content of WSP are provided in <a href="#">Section 13 of the Act</a> .  |
| Water services (or supply)   |  |
| Discharging waste or water containing waste (e.g. municipal and industrial wastewater, contaminated storm water runoff, contaminated river runoff due to e.g. inappropriate catchment practices)                                   | The <a href="#">EIA Regulations promulgated under NEMA</a> (Government Notice No. R, 386 of 2006 (Activity No. 25) requires the performance of a Basic Assessment 'for the expansion of or changes to existing facilities for any process or activity, which requires an amendment of an existing permit or license or a new permit or license in terms of legislation governing the release of emissions, pollution, effluent'.   |
| Disposing of waste in a manner that may detrimentally impact on a water resource (e.g. littering, solid waste dumping, and septic and conservancy-tank seepage, marine aquaculture waste)  | The <a href="#">EIA Regulations promulgated under NEMA</a> (Government Notice No. R, 387 of 2006 require the performance of Scoping and EIA for the construction of facilities or infrastructure, including associated structures or infrastructure, for any process or activity which requires a permit or license in terms of legislation governing the generation or release of emissions, pollution, effluent or waste and which is not identified in Government Notice No. R. 386 of 2006.  |
| Disposing in any manner water that contains waste from, or that has been heated in, any industrial or power-generation process (e.g. industrial wastewater or contaminated storm water runoff originating from an industrial area) | <p><a href="#">Section 21 of the NWA</a> classifies these activities (largely influencing freshwater flows) as a water use that requires authorisation from DWA. More details on such activities are provided in Section 21. Operational management procedures and actions are typically specified in the individual License Agreements.</p> <p>Under <a href="#">Section 39 of the NWA</a>, DWAF has promulgated <a href="#">General Authorisation</a> (2004) in terms of which certain activities, classified as water uses, exempts a water user from applying for a license.</p> <p><a href="#">Part 8 of the NWA</a> also states that a water use may be subject to an EIA (under NEMA).</p> <p><a href="#">Section 7 of the Water Services Act</a> regulates industrial use of water, both in terms of use and disposal of effluent (possible overlap with section 21 of the NWA)</p> <p><a href="#">Chapter 8 of the Coastal Management Bill</a> deals with Marine and Coastal Pollution Control, specifically addressing 'Discharge of Effluent into coastal waters'. The Bill does recognise DWAF's current involvement in such matter and proposes that such activities be management and control in collaboration with DWAF.</p> <p>Pollution in commercial Ports is governed under the <a href="#">National Ports Act, Regulations for the Harbours of South Africa and South West Africa</a> (Government Notice R 562 of 1982 (as amended) issued under the South</p> |

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| <b>ACTIVITIES AND/OR DEVELOPMENTS</b> | <b>KEY LEGISLATION</b>  |
|---------------------------------------|---|
|                                       | <p><i>African Transport Services Act (No. 65 of 1981) remain in force (in so far as they are not inconsistent with the new Act) until amended or repealed under the new Act. Any reference in the regulations to 'harbour' must be interpreted to mean 'port'.</i></p> <p><i>This <a href="#">MLRA</a> governs pollution matters in fishing harbours, e.g. Laaiplek (Berg Estuary). <a href="#">The MLRA - General Regulations</a> (Government Notice R1111 in Government Gazette 19205 of 2 September 1998 - as amended) stipulates specific requirements in this regard, e.g. Regulation 87 stipulates that all waste, except biodegradable household waste, generated on a ship, must be taken back to the harbour and not disposed of at sea.</i></p>   |
| Dumping of waste (e.g. dredge spoil)  | <p><i>This <a href="#">Dumping at Sea Control Act</a> (as <a href="#">amended</a> in 1995) provides for the control of dumping of substances in the sea (including estuaries). As per the London Convention, Schedule 1 stipulates 'Prohibited Substances', including organohalogens, mercury, persistent plastics and high-level radioactive waste. Schedule 2 refers to 'Restricted Substances', including arsenic, lead, cyanides, fluorides, scrap metal and ammunition. Under the Act, dumping requires a permit from DEAT, usually subject to environmental investigations. The dumping of any substance not mentioned in Schedules 1 and 2. ( to be repealed by ICMB) (see below)</i></p> <p><i><a href="#">Chapter 8 of the Coastal Management Bill</a> deals with Marine and Coastal Pollution Control, specifically addressing 'Incineration and Dumping at sea'.</i></p> |
| Oil spills at sea                     | <p><i>Pollution matter linked to oil spills at sea is primarily governed under the <a href="#">Marine Pollution (Control and Civil Liability) Act</a>.</i></p>  |
| Ballast water discharges              | <p><i>Details available from DEAT (Chief Directorate: Marine and Coastal Management)</i></p>  |

### 3.3 Exploitation of Living Marine Resources

The protection and management of South Africa's living marine resources are primarily the responsibility of DEAT (specifically DEAT's Chief Directorate: Marine and coastal Management) under the Marine Living Resources Act (No. 18 of 1998) (the "MLRA"):

| <b>ACTIVITIES AND/OR DEVELOPMENTS</b>   | <b>KEY LEGISLATION</b>   |
|---|--|
| Commercial fishing activities (e.g. landing, transportation, delivery and processing, aquarium trade, curio trade, traditional medicine and medical research) | <p><i>This <a href="#">MLRA</a> (as <a href="#">amended</a> in 2000) governs pollution matters related to the exploitation of marine living resources. Specific requirements are stipulated in the <a href="#">MLRA - General Regulations</a> (Government Notice R1111 in Government Gazette 19205 of 2 September 1998 - as amended).</i></p> <p><i>Specific requirements linked to recreational fishing are stipulated in the <a href="#">Recreational Fishing Information Brochure</a> (<a href="http://www.mcm-deat.gov.za/recreational/index.html">www.mcm-deat.gov.za/recreational/index.html</a>).</i></p> |
| Line fishing (commercial, subsistence & recreational)   |  |
| Net fishing – commercial (e.g. gill nets, beach seine-nets and fyke nets)   |  |
| Net fishing - subsistence (e.g. beach seine-nets, gill nets, set nets, drift nets and stake nets)   |  |

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| <b>ACTIVITIES AND/OR DEVELOPMENTS</b>  | <b>KEY LEGISLATION</b>   |
|--|--|
| <i>Cast-net fishing – recreational (fish and invertebrate species)</i>   |  |
| <i>Collection of shellfish, bait and other invertebrate species (commercial, subsistence &amp; recreational)</i> |  |
| <i>Traditional fish traps</i>  |  |
| <i>Hobby aquarium collection (e.g. exploitation of seahorses and pipe-fish)</i>                                  |  |
| <i>Harvesting of estuarine vegetation (e.g. mangroves and reeds)</i>   |  |
| <i>Introduction of alien species (e.g. fish and invertebrates)</i>   |  |
| <i>Extraction of peat</i>  |  |
| <i>Biological pest control</i>   |  |
| <i>Mariculture (including genetically modified organisms)</i>  | <i><u>Section 18 and 27 of the MLRA</u> (as <u>amended</u> in 2000) governs orderly control and development of mariculture activities (including pollution matters). Specific requirements are stipulated in the <u>MLRA – General Regulations</u> (Government Notice R1111 in Government Gazette 19205 of 2 September 1998 - as amended).</i> |

#### **4. Best Practice Guides and/or Guideline Documents**

Several Best Practice Guides or Guideline documents are available to assist with the implementation of Legislation linked to the management and control of activities and developments posing a potential threat to estuaries. Some of the most important and useful documents are highlighted here.

##### ***Setting Resource Objectives and Ecological Water Requirements (Chapter 3 of NWA)***

The Water Resource Protection Policy (under this NWA) provides detailed guidelines and procedures for the Classification (i.e. predefined health status) and the setting of Resource Quality Objectives for the protection of aquatic ecosystems (including objectives for water quantity, water quality, habitat integrity and biotic integrity). For estuaries these methods are provided in [Determination of Ecological Water Requirements for Estuaries – Version 2](#) (2004) including [Appendices](#) (2004). Proposed updates to the data measurement and monitoring programme requirements are also available in a [Water Research Commission Report](#).

##### ***Management of Sensitive Areas (Environment Conservation Act)***

Regulations on Sensitive Coastal Areas promulgated under this Act remains in force until replaced with new regulations under NEMA. Currently a useful management tool to provide a management tool that can assist authorities and applicants in meeting the requirements of the SCA regulations the Guidelines for the Control and Management of Activities in Sensitive Coastal Areas that include (<http://sacoast.uwc.ac.za/publications/>):

- [Guideline 1: The Control of Activities in Sensitive Coastal Areas](#)
- [Guideline 2: Guidelines and definitions](#)
- [Guideline 3: Legal aspects, requirements and procedures](#)
- [Guideline 4: Pro forma Environmental Impact Questionnaire/Report](#)

##### ***Environmental Impact Assessments (Section 24 of NEMA)***

In order to assist potential applicants, environmental assessment practitioners, and interested and affected parties to understand what is required of them in terms of the EIA Regulations (2006), what their rights are and/or what their roles may be, DEAT is in the process of preparing a series of national guideline documents. National guidelines already available in draft format include (Amanda Britz, DEAT, pers comm.):

- [Guideline 3: General guide to the EIA Regulations](#)
- [Guideline 4: Public participation](#)
- [Guideline 5: Assessment of alternatives and impacts](#)
- [Guideline 6: Environmental management frameworks.](#)

An Integrated Environmental Management (IEM) series (not guidelines) are also available: [www.environment.gov.za/services/documents/publications/eia\\_info\\_series\\_24062003.html](http://www.environment.gov.za/services/documents/publications/eia_info_series_24062003.html).

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A series of guidelines related to environmental assessment and management (2005) have also been published by the Provincial Department of Environmental Affairs & Development Planning, Western Cape of which the overall purpose is to improve the efficiency, effectiveness and quality of environmental assessment and management processes.

These include ([www.capecgateway.gov.za/eng/your\\_gov/3576/pubs/guides/G](http://www.capecgateway.gov.za/eng/your_gov/3576/pubs/guides/G)):

- [Guideline for determining the scope of specialist involvement in EIA processes](#)
- [Guideline for the review of specialist input in EIA processes](#)
- [Guideline for involving biodiversity specialists in EIA processes](#)
- [Guideline for involving hydro-geologists in EIA processes](#)
- [Guideline for involving visual and aesthetic specialists in EIA processes](#)
- [Guideline for involving heritage specialists in EIA processes](#)
- [Guideline for involving economists in EIA processes](#)
- [Guideline for Environmental Management Plans.](#)

More recently the Provincial Department of Environmental Affairs & Development Planning, Western Cape also published a series of draft guidelines for comment in terms of the requirements of the new EIA Regulations (2006). These include ([www.capecgateway.gov.za/eng/your\\_gov/3576/pubs/guides/D](http://www.capecgateway.gov.za/eng/your_gov/3576/pubs/guides/D)):

- [Guideline on Public Participation](#)
- [Guideline on Transitional Arrangements](#)
- [Guideline on Alternatives](#)
- [Guideline on Exemption Applications](#)
- [Guideline on Appeals](#)
- [Guideline on the interpretation of the Listed activities](#)
- [Generic Best Management Practise Guidelines for Aquaculture Development and Operation in the Western Cape.](#)

In addition, the Provincial Depart Environment Affairs & Development Planning, Western Cape has also developed [Guidelines for Resort Developments](#) (2005) addressing resort developments in the rural areas of the Western Cape, outside the edges of urban areas and within sensitive areas on the urban fringes ([www.capecgateway.gov.za/eng/your\\_gov/3576/pubs/guides/G](http://www.capecgateway.gov.za/eng/your_gov/3576/pubs/guides/G)).

A *Manual for the Application of Bioregional Planning* in the Western Cape Province ([www.capecgateway.gov.za/eng/your\\_gov/3576/pubs/guides/M](http://www.capecgateway.gov.za/eng/your_gov/3576/pubs/guides/M)) are also available, setting out planning guidelines for local and provincial government on the preparation of Integrated Development Plans, Spatial Development Frameworks and Spatial Development Plans in order to contribute to the creation of a safer environment and to protect, enhance and promote the total environment for the optimal development of the people.

Another document of relevance to estuarine management is the Western Cape Provincial Spatial Development Framework ("WCPSDF") of 2005 that was commissioned by the DEADP ([www.capecgateway.gov.za/eng/pubs/guides/W/120505](http://www.capecgateway.gov.za/eng/pubs/guides/W/120505)). The WCPSDF is a policy document, therefore it does not create (or take away) any rights to use land. Like all guidelines, the WCPSDF must not be applied rigidly but rather, in a manner that takes account of the particular circumstances of each case.

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**NOTE:**

*The provincial government is currently in the process of drafting an integrated planning, environmental and heritage law (currently in a draft Bill format) that will facilitate sustainable development in a variety of ways, including by requiring the Province to develop, and regularly update, a provincial policy and spatial framework to guide decision-makers. The WCPSTDF will be the first such spatial framework once the Bill is passed and becomes a provincial Act, and the WCPSTDF will then have to be updated and applied in accordance with the provisions of the new statute. In the interim, the WCPSTDF will be adopted as a structure plan in terms of the Land Use Planning Ordinance (“LUPO”). A structure plan is intended to guide anyone making a decision under LUPO, particularly when determining whether or not a proposed development is desirable. The role of the WCPSTDF will therefore be to provide guidelines to help decision-makers under LUPO to determine the desirability of a proposed development by considering whether or not it is socially, economically and ecologically sustainable (Nicholas Smith, pers. comm.).*

*The WCPSTDF deals both with issues that are explicitly spatial (for example, where future residential developments should be located), and with issues that have not to date in South Africa been viewed as part of spatial policy but which have significant spatial impacts (for example, recycling of waste, or limiting carbon emissions). The scope of the WCPSTDF is thus broader than traditionally associated with land use planning.*

*In this regard, it is necessary to refer to the recent judgment in the High Court of South Africa (Cape of Good Hope Provincial Division) in *SLC Property Group (Pty) Ltd and Longlands Holdings (Pty) Ltd v The Minister of Environmental Affairs and Economic Development (Western Cape) and The Municipality of Stellenbosch*.*

*In this matter, the Court dealt specifically with the WCPSTDF, and held that it is clear that the WCPSTDF is a policy document and therefore merely a guideline which has to be implemented within the bounds of the powers conferred on the Province by statute.*

*The Court refers to the following dictum by Harms JA regarding the use of policy (the WCPSTDF in the present case):*

*“I prefer to begin by stating the obvious, namely that laws, regulations and rules are legislative instruments, whereas policy determinations are not. As a matter of sound government, in order to bind the public, policy should normally be reflected in such instruments. Policy determinations cannot override, amend or be in conflict with laws (including subordinate legislation). Otherwise the separation between Legislature and Executive will disappear... In this case, however, it seems that the provincial legislature intended to elevate policy determinations to the level of subordinate legislation...” (Emphasis supplied).*

**Waste & Water Quality Management (Section 21 of NWA)**

To assist applicants in the authorisation process under Section 21 of the NWA, DWAF has compiled a manual, [Water Use Authorisation Process for Individual Applications \(www.dwaf.gov.za/Documents/\)](http://www.dwaf.gov.za/Documents/) describing the administrative procedures and parties to be involved at different stages of the authorisation process.

With particular reference to the disposal of wastewater derived from land, DWAF published their [Operational Policy for the Disposal of Land-derived Water containing Waste to the Marine Environment of South Africa, 2004](http://www.dwaf.gov.za/Documents/), which also includes a [Best Practice Guide](http://www.dwaf.gov.za/Documents/) and [Appendices \(www.dwaf.gov.za/Documents/\)](http://www.dwaf.gov.za/Documents/).

The South African Water Quality Guidelines for Coastal Marine Waters provide guidelines for the following uses of coastal waters (DWAF, 1995):

- [Natural Environment](#)
- [Recreational Use](#)
- [Industrial use](#)
- [Mariculture.](#)

In terms of management of urban storm water runoff, DWAF produced a number of guideline documents, including ([www.dwaf.gov.za/Documents/](http://www.dwaf.gov.za/Documents/)):

- *A framework for implementing non-point source management under the National Water Act* (Pegram et al, 1999)
- *A guide to non-point source assessment* (Pegram & Görgens, 2001)
- Guidelines for human settlement planning and design - The Red Book (CSIR, 2001)
- [Managing the Water Quality Effects of Settlements](http://www.dwaf.gov.za/Projects/Dense/) (more guidelines can be obtained <http://www.dwaf.gov.za/Projects/Dense/>)

In terms of waste management, DWAF has also published document specifying minimum requirements and guidelines for ([www.dwaf.gov.za/Dir\\_WQM/docsFrame.htm](http://www.dwaf.gov.za/Dir_WQM/docsFrame.htm)):

- Waste Disposal by Landfill, 1998
- Monitoring of a Waste Management Facility, 1998
- Sludge disposal guidelines, 2006.

DWAF is also in the process of developing a [Strategy for a Waste Discharge Charge System, 2003](http://www.dwaf.gov.za/Documents/) ([www.dwaf.gov.za/Documents/](http://www.dwaf.gov.za/Documents/)). The aim here is to a) Promote the sustainable development and efficient use of water resources, b) Promote the internalisation of environmental costs by impactors and c) Recover some of the costs of managing water quality.

#### ***Dumping of Dredged Material (Dumping at Seas control Act)***

Guidelines on pollutant limits in dredge spoil has been provided by DEAT, linked to the dumping of dredged Material [Guidelines for the management of dredge spoil in South African waters](#) (unpublished document, DEAT).

#### ***Oil Pollution (Marine Pollution [Control and Civil Liability] Act)***

[Coastal Oil Spill Contingency Plans](#), details the actions to be taken when there is a threat of oil impacting the shore line or an impact has occurred and local authorities in coastal regions play an important role in the execution of such plans and their tasks are detailed in the documents. These coastal plans are being re-drafted and it is important that local authorities clarify their responsibilities in this regard.

***Water Services Plans (Sections 12 & 13 of Water Services Act)***

Guidelines on sanitation systems, as part of Water Services Planning under Section 12 & 13 of the Water Service Act., are discussed in [\(www.dwaf.gov.za/Documents/\)](http://www.dwaf.gov.za/Documents/):

- [Strategic Framework for Water Services, 2003](#)
- [Managing the water quality effects of settlements](#) (more guidelines can be obtained <http://www.dwaf.gov.za/Projects/Dense/>)

***Off- road Vehicle Activities in Coastal Area (Section 24[4] of NEMA)***

[Off Road Vehicle Regulation Guidelines, 2004](#) ([www.mcm-deat.gov.za/4x4/](http://www.mcm-deat.gov.za/4x4/)) has been prepared by DEAT and can be accessed to assist with the implementation of the Off Road Vehicle Regulations promulgated under Section 24(4) of NEMA.

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***Appendix A:***

***Summary list of National legislation potentially applicable to  
estuarine Management in South Africa***



**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| YEAR | NATIONAL LEGISLATION  | LEAD AGENT  | SHORT DESCRIPTION   | RELEVANCE* |     |     |     |
|------|---|---|---|------------|-----|-----|-----|
|      |   |   |   | OBJ        | L&D | WQQ | ELR |
| 2006 | National Environmental Management: Integrated Coastal Management Bill   | DEAT<br>(Marine & Coastal Management)                                   | See main document   |            | x   | x   |     |
| 2006 | National Environmental Management: Waste Management Bill                | DEAT  | See main document   |            |     | x   |     |
| 2005 | National Ports Act (No. 12 of 2005)                                     | Department of Transport and National Ports Authority (NPA)              | See main document   |            |     | x   |     |
| 2004 | National environmental Management: Air Pollution Act (No. 39 of 2004)   | DEAT  | To reform the law regulating air quality in order to protect the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development while promoting justifiable economic and social development; to provide for national norms and standards regulating air quality monitoring, management and control by all spheres of government; for specific air quality measures |            |     | x   |     |
| 2004 | National Environmental Management: Biodiversity Act (Act 10 of 2004)    | DEAT  | See main document   | x          | x   | x   | x   |
| 2004 | National Health Act (No. 61 of 2004)                                    | Delegated to Provincial and Local authorities from Department of Health | See main document   |            |     | x   |     |
| 2003 | National Environmental Management: Protected Areas Act (Act 57 of 2003) | DEAT  | See main document   | x          | x   | x   | x   |
| 2002 | Disaster Management Act (No. 57 of 2002)                                | Act is administered by a Cabinet member designated by the President     | To provide for an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery; the establishment of national, provincial and municipal disaster management centres; disaster management volunteers; and* matters incidental thereto.                                  |            | x   | x   |     |
| 2002 | Mineral and Petroleum Resources Development Act (No. 28 of 2002)        | Department of Minerals and Energy                                       | See main document   |            | x   |     |     |
| 2000 | Local Government: Municipal Systems Act (Act 32 of 2000)                | Department of Provincial and Local Government                           | See main document   | x          | x   | x   | x   |
| 1999 | World Heritage Convention Act (Act 49 of 1999)                          | DEAT  | See main document   | x          | x   | x   | x   |
| 1999 | National Heritage Resources Act (Act 25 of 1999)                        | DEAT (through South African Heritage Resources Agency (SAHRA))          | See main document   | x          | x   | x   | x   |
| 1998 | Local Government Municipal Structures Act (No.                          | Department of Provincial and Local                                      | The Constitution establishes three categories of municipalities. This   | x          | x   | x   | x   |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| YEAR | NATIONAL LEGISLATION  | LEAD AGENT  | SHORT DESCRIPTION   | RELEVANCE* |     |     |     |
|------|---|---|---|------------|-----|-----|-----|
|      |   |   |   | OBJ        | L&D | WQQ | ELR |
|      | 117 of 1998, amended by Act 33 of 2000)                           | Government  | Act elaborates on the categorisation of municipalities as defined by the Constitution. It provides for “the establishment of municipalities in accordance with the requirements relating to categories and types of municipality; to establish criteria for determining the category of municipality in an area” and other related matters. This Act includes chapters on the categories and types of municipalities; the establishment of municipalities and the functions and powers of municipalities (Glazewski 2000) |            |     |     |     |
| 1998 | National Environmental Management Act (Act 107 of 1998)           | DEAT  | See main document   | x          | x   | x   | x   |
| 1998 | National Veld and Forest Fire Act (No. 101 of 1998)               | DWAF  | Sets out to reform the law on veld and forest and repeals certain provisions of the Forest Act of 1984. It provides for matters relating to fire protection, and fighting, offences and penalties and enforcement.  |            |     | x   |     |
| 1998 | Marine Living Resources Act (Act 18 of 1998)                      | DEAT (Chief Directorate: Marine & Coastal Management) | See main document   | x          |     |     | x   |
| 1998 | National Water Act (Act 36 of 1998)                               | DWAF  | See main document   | x          | x   | x   | x   |
| 1998 | Merchant Shipping Mandatory Ships Routing Regulations             |   | To provide for the control of merchant shipping and matters related to recording, registering and licensing of ships; safety of ships; wrecks and salvage and offences and penalties.   |            |     | x   |     |
| 1998 | National Forests Act (No. 84 of 1998)                             | DWAF  | See main document   |            | x   |     |     |
| 1997 | Water Services Act (No. 108 of 1997)                              | DWAF  | See main document   |            | x   | x   |     |
| 1996 | The Constitution (Act 108 of 1996)                                | National Government                                   | See main document   | x          |     |     |     |
| 1996 | Wreck Salvage Act (No. 94 of 1996)                                |   | The Act provides for the salvage of certain vessels and for the application of the International Convention on Salvage, 1989, to SA waters and for the repeal or amendment of certain sections of the Merchant Shipping Act (1951)  |            | x   | x   |     |
| 1996 | Local Government Transition Second Amendment Act (Act 97 of 1996) | Department of Provincial and Local Government         | See main document   | x          | x   |     |     |
| 1995 | Tourism Act (No. 72 of 1993, as amended in 1996 & 2000)           | DEAT  |   | x          | x   |     |     |
| 1995 | Development Facilitation Act (Act 67 of 1995)                     | Department of Provincial and Local Government         | See main document   | x          | x   | x   | x   |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| YEAR | NATIONAL LEGISLATION  | LEAD AGENT  | SHORT DESCRIPTION  | RELEVANCE* |     |     |     |
|------|---|---|--|------------|-----|-----|-----|
|      |   |   |  | OBJ        | L&D | WQQ | ELR |
| 1994 | Maritime Zone Act (No. 15 of 1994)  |   | The Act provides for the maritime zones of the Republic (e.g. internal waters, territorial waters, contiguous zone, maritime cultural zone, exclusive economic zone, continental shelf); and to provide for matters relating to installations, maritime casualties and self-defence.   |            | x   |     |     |
| 1993 | Local Government Transition Act (No. 209 of 1993)                                   | Department of Provincial and Local Government         | To provide for revised interim measures with a view to promoting the restructuring of local government, and for that purpose to provide for the establishment of Provincial Committees for Local Government in respect of the various provinces  | x          | x   |     |     |
| 1989 | Environmental Conservation Act (No. 73 of 1989)                                     | DEAT  | See main document  | x          |     |     |     |
| 1988 | Sea Fisheries Act 12 of 1988  | DEAT (Chief Directorate: Marine & Coastal management) | <p>Defines “sea” to mean “the water and the bed of the sea ... including the sea-shore and the water and the bed of a tidal river, tidal lagoon ... and includes the internal waters referred to in section 3 of the Maritime Zones Act: Provided that in the case of rivers and lagoons, internal waters shall only include tidal rivers and tidal lagoons”. The Sea Fisheries Act uses the same definitions for “tidal lagoon” and “tidal river” as those used in the Sea-shore Act.</p> <p>Along certain sections of our coast, marine reserves have been proclaimed under this Act. Marine reserves may include inter-tidal and sub-tidal areas. While some marine reserves were proclaimed to protect commercially important species such as rock lobster or abalone, others prohibited certain activities, such as boat angling or spear fishing. In a few, all marine life is protected.</p> <p>Part IX of this Act was replaced by the MARINE LIVING RESOURCES ACT, with the exception of some provisions regulating control over the collection and removal of aquatic plants and shells.</p> |            |     |     | x   |
| 1986 | International Convention for Prevention of Pollution from Ships Act (No. 2 of 1986) | Department of Transport                               | This Act gives legal effect to MARPOL in South Africa, as well as Annex I (regulations on oil) and Annex II (regulations on noxious liquid substances in bulk) of the Convention.  |            |     | x   |     |
| 1983 | Conservation of Agricultural Resources Act (No. 43 of 1983)                         | Department of Agriculture                             | See main document  |            | x   | x   |     |
| 1981 | Marine Traffic Act (No. 2 of 1981)  | Department of Transport.                              | The act sets out to regulate marine traffic in the SA and to provide for matters such as regulating ships traffic and the stopping or  |            |     | x   |     |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| YEAR | NATIONAL LEGISLATION  | LEAD AGENT  | SHORT DESCRIPTION  | RELEVANCE* |     |     |     |
|------|---|---|--|------------|-----|-----|-----|
|      |   |   |  | OBJ        | L&D | WQQ | ELR |
|      |   |   | anchoring of ships outside fishing harbours and the sinking and abandoning of ships.   |            |     |     |     |
| 1981 | Marine Pollution (Control and Civil Liability) Act (No. 6 of 1981)          | Department of Transport (prevention) and DEAT (combating) | See main document  |            |     | x   |     |
| 1980 | Dumping at Sea Control Act (No.73 of 1980)                                  | DEAT (Chief Directorate: Marine & Coastal Management)     | To be repealed by Integrated Coastal Bill (see above)  |            |     | x   |     |
| 1977 | Environmental Laws Rationalization Act (No. 51 of 1997)                     |   | Makes provision for the rationalisation of certain Acts of Parliament which are administered by the DEAT (e.g. Sea-Shore Act and Dumping at Sea Control Act), by amending those acts and by extending their application to certain areas which at present form part of the national territory of the Republic, but where other laws applied, such as Transkei, Bophuthatswana, Venda, Ciskei and other previously self-governing territories such as Kwa-Zulu. |            | x   | x   |     |
| 1977 | National Buildings Regulations and Building Standards Act (No. 103 of 1977) |   | Sets requirements for the approval and installation of storm water drains. These regulations must be read together with the South African Bureau of Standard's code of practice, which also lays down detailed requirements for the design of storm water drainage systems.  |            | x   | x   | x   |
| 1976 | National Parks Act (No. 57 of 1976)   |   | The National Parks Act provides for the establishment of National Parks. National Park status establishes the strongest claim to permanent protection that is possible. Areas above and below the intertidal zone may be included in a National Park.  | x          | x   | x   | x   |
| 1975 | Lake Areas Development Act (No. 39 of 1975)                                 | DWAF  | This law (rarely used since enactment) provides for the establishment of Lake Areas (which include tidal lagoons or tidal rivers) and the opening and closing of the mouth of a tidal lagoon or a tidal river in a declared lake area. The effectiveness of this law is questionable, as only two such areas have been proclaimed under it. Those Lake Areas are managed by the SANP by virtue of provisions in the National Parks Act                         | x          | x   | x   | x   |
| 1974 | International Health Regulations Act (No. 28 of 1974)                       | National Ports Authority (NPA)                            | The Port Health Service is responsible for the prevention of quarantinable diseases in the country). These services are rendered at sanitary airports (Johannesburg, Cape Town and Durban international airports) and approved ports.<br><br>The Act also requires that every seaport must be provided with a system for the removal and disposal of excrement, refuse, wastewater, condemned food and other matter dangerous to health.                       |            |     | x   |     |
| 1973 | Sea Bird and Seal Protection Act (No. 46 of 1973)                           | DEAT (Marine & Coastal Management)                        | This Act governs the protection and control of the capture, killing and products produced from seabirds and seals.   |            |     |     | x   |
| 1973 | Hazardous Substances Act (No. 15 of 1973)                                   | Department of Health and Welfare                          | This Act provides for the control of substances which may cause  |            |     | x   |     |

*Legislation*

**Legislation pertaining to  
Management of Environmental Threats within Estuaries**

| YEAR | NATIONAL LEGISLATION   | LEAD AGENT   | SHORT DESCRIPTION   | RELEVANCE* |     |     |     |
|------|--|--|---|------------|-----|-----|-----|
|      |  |  |   | OBJ        | L&D | WQQ | ELR |
|      |  |  | <i>injury or ill health to, or death, of human beings by reason of their toxic, corrosive, irritant, strongly sensitizing or flammable nature. To provide for the prohibition and control of the importation, manufacture, sale, use, operation, application, modification, disposal or dumping of such substances and products.</i>  |            |     |     |     |
| 1972 | <i>Foodstuffs, Cosmetics and Disinfectant Act (No. 54 of 1972)</i> | <i>Department of Health and Welfare</i>              | <i>In South Africa standards (i.e. concentration limits of constituents required by law) specifying the limits of chemical and microbiological constituents in the flesh of different marine organisms used for human consumption are covered under the Foodstuffs, Cosmetics and Disinfectants Act (No. 54 of 1972) and are listed in two regulations, i.e.:</i> <ul style="list-style-type: none"> <li><i>Regulation - Marine food, 2 November 1973 (re Bacteriological contamination)</i></li> <li><i>Regulations related to metals and foodstuffs, 9 September 1994.</i></li> </ul> |            |     | x   |     |
| 1967 | <i>Physical Planning Act (No. 88 of 1967)</i>                      | <i>Department of Provincial and Local Government</i> | <i>The Act provides for Guide Plans that could influence the planning and location of storm water drains.</i>   |            | x   | x   |     |
| 1951 | <i>Merchant Shipping Act (No. 57 of 1951)</i>                      | <i>Department of Transport</i>                       | <i>Towards preventing oil pollution at sea</i>  |            |     | x   |     |
| 1935 | <i>Seashore Act (No. 21 of 1935)</i>                               | <i>DEAT</i>  | <i>See main document</i>  |            | x   | x   |     |

OBJ: Setting Resource Objectives; L&D: Land-use and Infrastructure Development; WQQ: Water Quantity and quality; ELR: Exploitation of Living Resources

*Legislation*