

Comment on Draft National Estuarine Management Protocol¹

Nicholas Scarr

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Monitoring and Research Programme, Public Service Accountability Monitor

For more information contact the PSAM, psam-admin@ru.ac.za
Tel: (046) 603 8358, Fax: (046) 622 7215

Key Finding

The draft protocol is problematic in a number of senses, but particularly in so far as its provisions relating to estuarine management plans (EMP's) are concerned.

Basis for EMP's

At a foundational level, in Section 2 (*Purpose of the Protocol*) the extrapolation drawn from sub-section 33 (2) of the Integrated Coastal Management Act (ICM Act) is fictitious. The quoted sub-section does indeed require that the protocol be prescribed, but it makes no mention of EMP's, much less indicate that the protocol "*will provide guidance for the management of estuaries through the development of individual estuarine management plans*" as asserted. Sub-section 33 (3) of the Act specifies that the protocol "*must establish minimum requirements for estuarine management plans*", which is an altogether different concept.

As an aside, but compounding this inaccuracy, sub-section 33 (3) specifies what is required of the protocol, not the purpose of the protocol, as stated.

These anomalies at the root of the protocol's provisions which relate to EMP's are instructive, and underpin more fundamental EMP flaws in the protocol.

Obligation to develop EMP's

Section 5 (*Responsible Authority For Developing Estuarine Management Plans*) deals at length with jurisdictions in relation to the development of EMP's, but it does so in a vacuum in the sense that neither the Act nor the protocol actually specify that plans must be developed.

¹ This submission is in response to an invitation to comment on the draft National Estuarine Management Protocol which was introduced by the Minister of Water and Environmental Affairs and which is contained in Government Gazette No. 35296 dated 4 May 2012 under Notice No. 336. The draft Protocol can be accessed via www.environment.gov.za.

The protocol purports to do so in the latter part of Section 5, where it provides that provincial coastal management lead agencies “*must as part of a coastal management programme identify a priority list of estuaries within the Province that need conservation and effective management. This should include a schedule of municipalities that should develop these EMP’s*”

However this provision is riddled with flaws. Aside from the fact that it does not have regard for timeframes attached to existing coastal management programmes and review processes associated therewith, conservation and effective management do not automatically equate with management plans, as seems to be inferred. But even if they did, no more is required than that an indication be given for each estuary of which organization would be responsible, in the event that EMP development was mandatory, for doing so. And this element has itself not been dealt with correctly – the reference is solely to municipalities, while immediately preceding text has elaborated on various authorities other than municipalities which could be responsible for the generation of EMP’s.

Finally, and notwithstanding any of these weaknesses, estuary and authority identification in a coastal management programme does not amount to a statutory requirement that EMP’s be developed. Hence, except in the case of the estuaries listed in sub-section 5.8, rolling out the development of EMP’s is effectively premised upon role-player buy-in rather than legal obligation.

Prioritisation of estuaries

This vagueness carries over into the prioritisation of estuaries for EMP development. Section 3 of the protocol (*Strategic Vision and Objectives*) makes reference to the protection of a representative sample of estuaries in order to achieve “*conservation targets as determined by the National Biodiversity Assessment of 2011 and the subsequent updates*”, while Section 4 (*Standards for Estuarine Management*) stipulates that an estuary “*must be managed in its current state and/or improved state in order to achieve the same targets.*”

The relationship between these targets and the priority lists of estuaries within provinces which require conservation and effective management, as provided for in Section 5 and referred to above, is not dealt with. Nevertheless, given that the 2011 Biodiversity Assessment recommends that 58 estuaries require full protection and 63 require partial protection, as well as the reference to conservation in Section 5, it is reasonable to assume that the protocol envisages some form of synergy between national biodiversity conservation planning and EMP development and implementation. But neither the mechanisms for facilitating this, nor the explicit roles and responsibilities which would accrue from them, are provided for.

Biodiversity targets

The perceived reliance for achievement of biodiversity targets on EMP development and implementation at the instigation of provincial coastal management lead agencies is puzzling. Biodiversity conservation is not the sole driver for estuary management, and it is conceivable that lead agencies’ imperatives could relate more to issues at the core of

their mandates, for example NEMA applications for authorization of structures below the high water mark. Similarly those municipalities which are active in estuary management might be driven by recreational use issues emanating from their responsibilities in terms of river control regulations promulgated under the Sea-Shore Act.

At the same time it is reasonable to presume that estuary protection in accordance with the Biodiversity Assessment would be achieved by way of the Marine Living Resources Act. This has obviously traditionally fallen within the core business of the national Department of Environmental Affairs (DEA), although the writer is unsure of whether the Department of Agriculture, Forestry and Fisheries (DAFF) has now assumed this responsibility. But regardless, whereas Marine Protected Area proclamations are ordinarily pursued as an initiatives in their own right; and cooption of other organizations may or may not occur, in the case of estuary protection it appears, at least from the protocol, as if DEA envisages that other organizations will actually take the lead in obtaining protection for estuaries in accordance with the Biodiversity Assessment's prioritizations.

If this is the case one imagines that the endorsement of these "other organizations" would have been obtained prior to publication of the protocol, in which case the protocol would spell out the terms of such endorsement. But by virtue of the manner in which the protocol is currently structured, DEA appears merely to be relying on other role players to achieve estuary biodiversity targets, much like it is doing in relation to the roll-out of EMP development.

Inappropriateness of protocol for the Eastern Cape

The observations above in connection with biodiversity conservation do not arise from a perspective which seeks to isolate functions within silos. The writer has an accomplished track record in achieving environmental management solutions by way of cooperative governance.² The cooperative approach however requires a sound understanding, especially on the part of lead agents, of the opportunities and constraints associated with partner organizations. The impression from the protocol is that DEA does not have this in so far as estuary management is concerned, at least not in the case of the Eastern Cape.

Consequently the inappropriateness of the protocol, or at the every least, its provisions relating to EMP's, multiplies in relation to the extent to which they are interrogated. One has to doubt the extent to which Eastern Cape role-players with enhanced insights to estuary management at an operational, rather than, critically, a research level, have been taken on board in the formulation of the protocol.

The writer is conversant with the role of the CAPE Estuary Management Programme in piloting the EMP approach espoused in the protocol,³ and was instrumental in the selection of an Eastern Cape estuary (the Gamtoos) for inclusion in this phase of the Programme. Regrettably reservations about the protocol's approach have not been dispelled by its application to this estuary – on the contrary, they have been reinforced.

² The writer served, among others, as convener and chairperson of the Eastern Cape Provincial Coastal Committee (PCC) and several PCC sub-committees, including the Estuary Management Sub-Committee.

³ The writer served on the CAPE Estuary Management Programme Steering Committee.

Moreover, this estuary is located on the western extreme of the province, which has socio-economic and environmental governance profiles which are not altogether dissimilar from those of the rest of the CAPE planning domain. Crucially, these profiles shift dramatically as one moves eastward in the province, where conditions are not at all equitable with estuary management in accordance with the protocol.

Weighting of Eastern Cape estuaries

In the Eastern Cape context as outlined thus far, and given the proportion of the country's estuaries which Eastern Cape systems comprise (approximately 55%), it is urged that the protocol be rethought, and that in the process, deep and meaningful consultation takes place with carefully selected role-players in the province about its suitability as a way forward for estuary management in the country.

This imperative is compounded by reference to the relative proportions of Eastern Cape estuaries listed in the 2011 Biodiversity Assessment as requiring protection. Of the 56 systems listed as requiring full protection, 32 are located in the Eastern Cape, while 27 of the 61 requiring partial protection are likewise Eastern Cape systems.⁴ In turn, of the 32 requiring full protection, only 9 are situated within jurisdictions which could currently be said to be conducive to estuary management. Similarly, only 11 of the 27 requiring partial protection fall within conducive jurisdictions.

EMP issues

The essential difficulty with the protocol, and especially its provisions relating to EMP's, is that they elevate estuary management to a level which is impractical, complicated, tedious and costly, on the one hand, and unnecessary and over ambitious on the other. This will result in the protocol being remote from many stakeholders and regulators.

The estuarine threats mentioned in the protocol are not disputed, and neither are the vision and objectives articulated in Section 3. However, the lengths which are prescribed for achieving integrated solutions to these challenges are counter-productive other than where estuary stakeholders, users and regulators collectively and consistently operate within a sophisticated context.

Demystifying estuary management

In an effort to demystify estuary management, the following is placed on record:

- Estuary management is not significantly more “complex” (see Section 1 (*Introduction*) of the protocol) - than numerous other aspects of coastal or environmental management. Many scenarios entail multiple organs of state and

⁴ Derived from lists on pp. 138 & 139 of the Estuary Component of the 2011 National Biodiversity Assessment. The slight discrepancies between the total numbers quoted from these pages and those quoted earlier in this submission are verbatim and acknowledged.

intricate stakeholder involvement. The cooperative philosophy required for integrated estuary management is common to all these scenarios.

- Management aspects which relate to the National Water Act can be, and in the writer's experience generally are, dealt with by the responsible authority independently of routine estuary management efforts. While hands-on managers, for example municipal river control officials, may to varying degrees appreciate the relevance of these elements to the bigger picture, they have little bearing on their day-to-day operations. Consequently, for practical purposes, mere recognition of an estuary's status in terms of this Act will suffice, and permit coal-face players to focus on accessible aspects of management, on which they can exert direct influence.
- Biodiversity conservation planning also takes place independently of routine operations, and it has been pointed out that macro-level implementation of planning outcomes, in the form of protected area proclamations, should remain the domain of national government. In so far as daily management activities are concerned, implementation of these outcomes will consist of monitoring and enforcement of compliance with relevant prescripts, which fishery control officers do anyway, regardless of where they may be stationed, and whether or not their jurisdictions are protected areas.
- The ICM Act has failed to bring about effective integration of land use planning and coastal resource management in the coastal zone as whole, despite concerted role-player efforts during the formulation phase to ensure adequate provision for this most cardinal of challenges. Hence DEA needs to be realistic about achieving this objective at estuary level via EMP's. Tailor-made mechanisms to do so do not presently exist for estuarine role-players to tap into, meaning efforts in this regard must of necessity be opportunistic and focus on regular land use planning and environmental impact management processes. They cannot be provided for in EMP's other than at a principle level.
- In processing NEMA applications for activities in or in the vicinity of estuaries, provincial environmental authorities to varying degrees attempt to base decision-making on frameworks and/or precedents, for example, jetty construction policies for specific estuaries. Generally, it could be argued that the wider the decision-making framework, the better the quality of decisions. In the case of an estuary's jetty policy, conceivably it would be a stronger framework if it was set against an estuary management plan rather than standing alone. But the point is that it can function on its own, and it constitutes a management tool which can readily be formulated at local level, and complemented with further tools created in similar fashion, without recourse to the onerous requirements of an EMP as provided for in the protocol.

Top-down estuary management

The critical point emanating from these statements is that the protocol is premised on a severely top heavy, top down approach which is inappropriate for much, if not all, of the country. Its point of departure should be systematic, bottom up augmentation, at local and regional level, of whatever management systems and structures, whether formal or

informal, already exist. And analogously, where these systems and structures are absent, capacity creation should be facilitated with a methodical, modest step-wise approach.

This cuts to the heart of the problem with the protocol's EMP provisions. The impression is that they represent a utopian concept more akin to a research paradigm than an operational one.

Role of DEA in estuary management

The research paradigm bias is consistent with the fact that DEA's operational role in estuary management was until recently confined to marine living resource management. And as we are aware, this function has now been usurped by the Department of Agriculture, Forestry and Fisheries.

Effectively DEA has an extremely limited experiential basis to draw on in charting a pathway for estuary management in the country. Even the fisheries management function is often shared with accredited fishery control officers from other organizations, and in many instances these officials are better equipped for estuary management than DAFF (previously DEA) officials, in the sense of boating mobility and so on. In the circumstances, therefore, at least in the Eastern Cape, DEA never was a central player in estuarine management operations, meaning there has been little in the way of bottom-up enlightenment of the management echelon as to the nuances of cooperative estuary management.

In this sense it is inevitable that DEA has placed undue reliance on researchers to generate estuary management solutions. This *modus operandi* in any case equates with the entrenched fisheries practice of (entirely correctly) utilising scientific research outputs as the basis for management decisions. However, this approach is misplaced in the case of estuary management as a whole, given the range of dynamics which elude especially non-government researchers.

Capture by consultants

The EMP provisions of the protocol constitute a classic case of government incapacity giving rise to misguided rule by researchers. Unsurprisingly, a protocol which reflects a research mindset has given rise to a regime which will perpetuate the entrapment of estuary management by the research and consulting sector. Organs of state do not have the capacity to generate the type of information the protocol requires for EMP's, hence implementation of the protocol will result in the information industry profiting nicely from its stranglehold on this information. This is not what the country needs.

Further EMP flaws

The flaws in the EMP provisions are too numerous to deal with comprehensively here. They are draconian and make unreasonable demands of stakeholders. The concept of 289 estuaries having EMP's in accordance with the specifications in the protocol is staggering.

Over and above the problematic aspects already alluded to, the “*detailed integrated monitoring plan*” and the span of material specified for the scoping phase, especially the “*detailed understanding of the structure (abiotic and biotic components), functioning and state of the estuary, including the underlying processes and drivers*”, stand out as being particularly presumptuous. Stakeholders do not need these scientific edifices to understand whether or not estuaries are in sound condition.

Way forward

The anomalies in the protocol’s treatment of its founding provisions in the ICM Act resonate with the gross imperfections of its provisions which relate to EMP’s. Contrary to the perspective of the protocol’s architects, the Act does not insist on the production of a plethora of individual EMP’s. DEA should take a leaf from this, and consider employing the EMP concept at a more generic level, in line with the protocol’s vision and objective provisions in Section 3. This could be done, for example, for classes of estuaries, based on estuary types or locations or other compelling criteria. But such EMP’s would need to be grounded deeper in operational realities and less deeply in planning methodology and scientific excellence.

Given that EMP’s are not obligatory within the context of the protocol’s present structure, the protocol’s onerous requirements for their development will give rise to a phenomenon whereby role players who wish to formulate EMP’s would be “punished” by having to conform with these requirements, whereas those who do not wish or care to develop EMP’s would get off scot-free, so to speak.

Clearly this is bizarre, and cannot have been intended. It does however point to DEA not having a solid grip on the business of estuary management. It has stretched its credibility with this protocol, and should return to the drawing board and consult, as proposed elsewhere in this submission.