

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT AMENDMENT BILL

*(As amended by the Select Committee on Land and Environmental Affairs
(National Council of Provinces))
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 8D—2013]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Environmental Management: Integrated Coastal Management Act, 2008, so as to amend certain definitions; to clarify coastal public property and the ownership of structures erected on and in coastal public property; to remove the power to exclude areas from coastal public property; to clarify and expand the provisions on reclamation; to clarify definitions and terminology; to simplify the administration of coastal access fee approvals; to simplify and amend powers relating to coastal authorisations; to replace coastal leases and concessions with coastal use permits; to extend the powers of MECs to issue coastal protection notices and coastal access notices; to limit the renewal of dumping permits; to simplify the composition and functions of the National Coastal Committee; to clarify the powers of delegation by MECs; to revise offences and increase penalties; to improve coastal authorisation processes; to provide for exemptions; to provide for transitional matters; to effect certain textual alterations; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 24 of 2008

1. Section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “admiralty reserve” of the following definition:

“ **‘access fee’** means a fee that is charged to allow a person to enter coastal public property and includes launching from and entering a vessel launch site with a boat;”

(b) by the substitution for the definition of “adverse effect” of the following definition:

“ **‘adverse effect’** means any actual [or], potential or cumulative impact on the environment that impairs, or may impair, the environment or any aspect of it to an extent that is more than trivial or insignificant [and, without limiting the term, includes any actual or potential impact on the environment that results in—

(a) a detrimental effect on the health or well-being of a person;

(b) an impairment of the ability of any person or community to provide for their health, safety or social and economic needs; or

- (c) **a detrimental effect on the environment due to a significant impact or cumulative effect of that impact taken together with other impacts];**”;
- (c) by the deletion of the definition of “authorisation”;
- (d) by the substitution for the definition of “coastal activities” of the following definition: 5
- “**‘coastal activities’** means [coastal] activities listed or specified in terms of Chapter 5 of the National Environmental Management Act which take place—
- (a) in the coastal zone[:]; or 10
- (b) outside the coastal zone but have or are likely to have a direct impact on the coastal zone;”;
- (e) by the insertion after the definition of “coastal activities” of the following definition;
- “**‘coastal authorisation’** means an authorisation under this Act, and 15
- includes the authorisation to reclaim land in terms of sections 7B and 7C, a coastal waters discharge permit in terms of section 69, a general discharge authorisation in terms of section 69, a dumping permit in terms of section 71, a coastal use permit in terms of section 65 and any other authorisation under this Act, but excludes an environmental 20
- authorisation;”;
- (f) by the deletion of the definition of “coastal concession”;
- (g) by the deletion of the definition of “coastal lease”;
- (h) by the insertion after the definition of “coastal management” of the following definition: 25
- “**‘coastal management line’** means a line determined by an MEC in accordance with section 25 in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal management objectives;”;
- (i) by the substitution for the definition of “coastal planning scheme” of the following definition: 30
- “**‘coastal planning scheme’** means a scheme that—
- (a) reserves defined areas within the coastal zone to be used exclusively or mainly for a specified [purposes] purpose; and
- (b) prohibits or restricts any use of these areas in conflict with the terms of the scheme;” 35
- (j) by the substitution for the definition of “coastal protection zone” of the following definition:
- “**‘coastal protection zone’** means the coastal protection zone contemplated in section [17] 16;” 40
- (k) by the deletion of the definition of “coastal set-back line”;
- (l) by the substitution for the definition of “coastal waters” of the following definition:
- “**‘coastal waters’** means—
- (a) [marine waters that form part of] the internal waters [or], 45
- territorial waters, exclusive economic zone and continental shelf of the Republic referred to in sections 3 [and], 4, 7 and 8 of the Maritime Zones Act, 1994 (Act No.15 of 1994), respectively; and
- (b) [subject to section 26, any] an estuary;”;
- (m) by the substitution for the definition of “coastal zone” of the following definition: 50
- “**‘coastal zone’** means the area comprising coastal public property, the coastal protection zone, coastal access land [and], coastal protected areas, the seashore[, and] coastal waters [and the exclusive economic zone], and includes any aspect of the environment on, in, under and above such area;” 55
- (n) by the substitution for the definition of “estuary” of the following definition:
- “**‘estuary’** means a body of surface water—
- (a) [that is part of a water course] that is permanently or periodically open to the sea; 60
- (b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the [water course] body of surface water is open to the sea; or

- (c) in respect of which the salinity is **[measurably]** higher than fresh water as a result of the influence of the sea, and where there is a salinity gradient between the tidal reach and the mouth of the body of surface water;”;
- (o) by the substitution for the definition of “general authorisation” of the following definition: 5
 “**‘general discharge authorisation’** means an authorisation under section 69(2);[{}];”;
- (p) by the insertion after the definition of “general authorisation” of the following definition: 10
 “**‘harbour’** means a harbour proclaimed in terms of any law and managed by an organ of state;”;
- (q) by the substitution for the definition of “high-water mark” of the following definition: 15
 “**‘high-water mark’** means the highest line reached by coastal waters, but excluding any line reached as a result of—
 (a) exceptional or abnormal **[floods or storms that occur no more than once in ten years]** weather or sea conditions; or
 (b) an estuary being closed to the sea;”;
- (r) by the substitution for the definition of “land development plan” of the following definition: 20
 “**‘land development plan’** means any plan that is **[prepared or]** approved in terms of legislation regulating land development and that indicates the desirable uses for areas of land but does not create legal rights to use land;”;
- (s) by the insertion after the definition of “Land Survey Act” of the following definition: 25
 “**‘land unit’** means a cadastral entity which is capable of registration in the deeds registry in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937);”;
- (t) by the substitution for the definition of “Minister” of the following definition: 30
 “**‘Minister’** means the Minister **[of Environmental Affairs and Tourism]** responsible for environmental affairs;”;
- (u) by the insertion after the definition of “pollution” of the following definition: 35
 “**‘port’** means a port as defined in the National Ports Act, 2005 (Act No. 12 of 2005);”;
- (v) by the insertion after the definition of “provincial lead agency” of the following definition: 40
 “**‘reclamation’** means the process of artificially creating new land within coastal waters, and includes the creation of an island or peninsula, but excludes beach replenishment by sand pumping for maintenance purposes;”.
- (w) by the substitution for the definition of “sea” of the following definition: 45
 “**‘sea’** means **[all marine waters, including]**—
 (a) the high seas;
 [(b) all marine waters under the jurisdiction of any state; and
 (c) the bed, subsoil and substrata beneath those waters, but does not include estuaries;]
 (b) all coastal waters; and
 (c) land regularly or permanently submerged by sea water, including— 50
 (i) the bed, subsoil and substrata beneath those waters; and
 (ii) land flooded by sea water which subsequently becomes part of the bed of coastal waters, including the substrata beneath such land;”;
- (x) by the deletion of the word “and” after the definition of “Waste Assessment Guidelines”. 55

Amendment of section 2 of Act 24 of 2008

2. Section 2 of the principal Act is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (d); and
- (b) by the insertion of the following paragraph after paragraph (d):

“(dA) to provide for the establishment, use and management of the coastal protection zone; and”.

Amendment of section 4 of Act 24 of 2008

3. Section 4 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- “(a) its **[internal waters, territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994)]** coastal waters; and”.

Amendment of section 6 of Act 24 of 2008

4. Section 6 of the principal Act is hereby amended—

- (a) by the substitution for the section heading of the following heading: **“[Conflicts] Interpretation and conflicts with other legislation”**; and
- (b) by the addition of the following subsection:

“(4) Section 7(2) of this Act shall not affect—
 (a) the ownership of an immovable structure, part of an immovable structure, or port or harbour installation or infrastructure; or
 (b) the control, use and management of the sea space, including turning basins and channels, within a port or harbour, existing prior to the commencement of this Act.”.

Amendment of section 7 of Act 24 of 2008

5. Section 7 of the principal Act is hereby substituted for the following section: 25

“Composition of coastal public property

7. (1) Coastal public property consists of—

- (a) coastal waters;
- (b) land submerged by coastal waters, including—
 - (i) land flooded by coastal waters which subsequently becomes part of the bed of coastal waters; and
 - (ii) the substrata beneath such land;
- (c) any natural island within coastal waters;
- (d) the seashore, including—
 - (i) the seashore of a natural or reclaimed island; and
 - (ii) the seashore of reclaimed land;
- (e) subject to section 66A, any admiralty reserve owned by the State;
- (f) any land owned or controlled by the State declared under section 8 to be coastal public property; or
- (g) any natural resources on or in any coastal public property of a category mentioned in paragraphs (a) to (f).

(2) Notwithstanding the provisions of subsection (1), coastal public property does not include—

- (a) any—
 - (i) immovable structure, or part of an immovable structure; or
 - (ii) installation or infrastructure located in a port or harbour, whether located on land or the seabed, lawfully constructed by an organ of state.
- (b) any portion of the seashore below the high-water mark, which was lawfully alienated before the Sea-shore Act, 1935 (Act No. 21 of 1935), took effect, or which was lawfully alienated in terms of that Act, and which has not subsequently been re-incorporated into the seashore;

- (c) any part of an island that was lawfully alienated before this Act commenced; or
- (d) any portion of a coastal cliff that—
 - (i) was lawfully alienated before this Act took effect; and
 - (ii) is not owned by the State.”.

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Insertion of sections 7A, 7B and 7C in Act 24 of 2008

6. The principal Act is hereby amended by the insertion after section 7 of the following sections:

“Purpose of coastal public property

7A. (1) Coastal public property is established for the following purposes: 10

- (a) To improve public access to the seashore;
- (b) to protect sensitive coastal ecosystems;
- (c) to secure the natural functioning of dynamic coastal processes;
- (d) to protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise; or
- (e) to facilitate the achievement of any of the objects of this Act.”.

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Reclamation of land for state infrastructure

7B. (1) No organ of state may reclaim land for the development of state infrastructure unless authorised by the Minister.

(2) The Minister may, on application, approve reclamation in terms of this section. 20

(3) An application for reclamation must be—

- (a) accompanied by—
 - (i) a detailed plan of how the land will be developed and utilised for the benefit of the State;
 - (ii) an assessment of whether there is any alternative land available and why such land cannot be used;
 - (iii) an explanation of the purpose for which the land is to be reclaimed;
 - (iv) detailed information on how development will be funded; and
 - (v) any other relevant information;
- (b) submitted to the Minister for pre-approval prior to any application for an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act; and
- (c) published by notice in the *Gazette* for public comment by the Minister for a period of no less than 60 days. 35

(4) If an environmental authorisation is refused, a pre-approval in terms of subsection (3)(b) becomes invalid.

(5) If an environmental authorisation is granted, the applicant must resubmit to the Minister the application, the environmental authorisation and other documents related to the reclamation for a final decision. 40

(6) A final decision made by the Minister in terms of subsection (5) must be tabled in Parliament within 60 days of the decision.

(7) Any land reclaimed for the development of state infrastructure vests in the organ of state applying for such reclamation. 45

(8) Unless authorised by the Minister, land reclaimed in terms of subsection (2) may not be utilised other than in accordance with the purpose stated in the original application and conditions of the authorisation.

(9) The Minister may, when approving a reclamation application, make the approval subject to any conditions or title deed restrictions. 50

(10) Before making a decision in terms of this section, the Minister must consult with any organ of state that may be affected by such decision.

Reclamation of land for purposes other than state infrastructure

- 7C.** (1) An application for reclamation for purposes other than the development of state infrastructure as contemplated in section 7B will only be considered in exceptional circumstances which are not contrary to the purpose of coastal public property as set out in section 7A. 5
- (2) An application for reclamation in terms of this section must be accompanied by—
- (a) details of how the land will be developed and its use;
 - (b) an assessment of whether there is any alternative land available and why such land cannot be used; 10
 - (c) information on whether the land and structures will be accessible to the public;
 - (d) information on whether the development is in the interests of the whole community;
 - (e) detailed information on how the development will be funded; and 15
 - (f) any other relevant information.
- (3) An application for reclamation must be submitted to the Minister for pre-approval prior to any application for an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act.
- (4) The Minister must— 20
- (a) follow the consultation process in section 53 prior to pre-approving an application for reclamation; and
 - (b) submit a pre-approval for reclamation to Parliament for ratification.
- (5) In the event that—
- (a) Parliament fails to ratify the pre-approval, the Minister's pre-approval as envisaged in subsection (3) becomes invalid; or 25
 - (b) the environmental authorisation is refused, a pre-approval in terms of subsection (3) and a ratification in terms of subsection (4)(b) becomes invalid.
- (6) In the event that Parliament ratifies the pre-approval, application may be made for an environmental authorisation in terms of Chapter 5 of the National Environmental Management Act. 30
- (7) If an environmental authorisation is granted, the applicant must resubmit to the Minister the application, the environmental authorisation, the ratified pre-approval and other documents related to the reclamation for a final decision. 35
- (8) A final decision made by the Minister in terms of subsection (7) must be tabled in Parliament within 60 days of the decision.
- (9) Land reclaimed in terms of this section forms part of state-owned land which may be alienated in terms of applicable legislation. This provision shall not apply to land which has been lawfully alienated prior to this provision coming into effect. 40
- (10) Unless authorised by the Minister, land reclaimed in terms of this section may not be utilised other than in accordance with the purpose stated in the original application and conditions of the authorisation. 45
- (11) The Minister may, when approving a reclamation application, make the approval subject to any conditions.”.

Amendment of section 8 of Act 24 of 2008

- 7.** Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 50
- “(1) The Minister may, by notice in the *Gazette*, declare in the manner contemplated in subsection (2) any state-owned land as coastal public property **[in order—**
- (a) to improve public access to the seashore;**
 - (b) to protect sensitive coastal ecosystems;** 55
 - (c) to secure the natural functioning of dynamic coastal processes;**
 - (d) to facilitate the achievement of any of the objects of this Act; or**
 - (e) to protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise] for the purposes set out in section 7A.”.** 60

Repeal of section 10 of Act 24 of 2008

8. Section 10 of the principal Act is hereby repealed.

Amendment of section 13 of Act 24 of 2008

9. Section 13 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection: 5
 “(1A) Subject to subsections (2) and (3), no person may prevent access to coastal public property.”;
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) (a) No access fee may be charged for access to coastal public property without the approval of the Minister. 10
 - (b) The Minister may by notice in the *Gazette* publish maximum fees for access to coastal public property or infrastructure located therein, payable by persons in general or a category of persons.
 - (c) Any person or organ of state may apply to the Minister to charge a fee in excess of the maximum published in terms of paragraph (b). 15
 - (d) The provisions of paragraph (a) shall not apply to fees for the use of facilities or activities which are located on or in coastal public property.”; and
- (c) by the substitution for subsection (5) of the following subsection: 20
 “(5) Subsections (3) and (4) do not apply to coastal public property—
 - (a) [that has been leased] for which a coastal use permit has been issued in terms of section 65; or
 - (b) that is, or forms part of, a protected area, or [the sea that forms part of] a port or harbour [or proclaimed fishing harbour].”.

Amendment of section 14 of Act 24 of 2008

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10. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) **[If land has a curvilinear boundary extending to, or a stated distance from, the high-water mark that curvilinear boundary may be substituted by a boundary of another character by following the procedure prescribed by section 34 of the Land Survey Act, provided that in addition to the requirements of that section the written agreement referred to in that section must be signed by—** 30
 - (a) the Minister; and**
 - (b) the holder of real rights in the land or in land contiguous to it whose rights would be adversely affected by the replacement of the curvilinear boundary.]** 35
 - No person may replace the high-water mark curvilinear boundary with a straight line boundary in terms of section 34 of the Land Survey Act.”;
- (b) by the deletion of subsections (2), (3) and (4); 40
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
 - “If the high-water mark is landward of a straight line boundary of a coastal land unit when this Act took effect, or the high-water mark moves [inland] landward of [the] a straight line boundary [line] of a coastal land unit due to the erosion of the coast, sea-level rise or other causes, [and remains inland of that boundary line for a period of three years,] the owner of that coastal land unit—”; and 45
- (d) by the substitution in subsection (5) for paragraph (a) of the following paragraph: 50
 “(a) loses ownership of any portion of that coastal land unit that is situated below the high-water mark to the extent that such land unit becomes coastal public property; and”; and
- (e) by the deletion of subsection (6).

Amendment of section 15 of Act 24 of 2008

11. Section 15 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No person may construct, maintain or extend any structure, or take other measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for in this Act, the National Environmental Management Act or any other specific environmental management Act”.

Amendment of section 16 of Act 24 of 2008

12. Section 16 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) Subject to subsection (2) and section 26, the coastal protection zone consists of—”;

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) any coastal **[protection]** protected area, or part of such area, which is not coastal public property;”;

(c) by the insertion in subsection (1) after paragraph (f) of the following paragraph:

“(fA) the part of a river which is situated within a land unit referred to in paragraph (d)(i) or (e);”;

(d) by the substitution in subsection (1) for paragraph (i) of the following paragraph:

“(i) any land adjacent to an area referred to in paragraphs (a) to (h) that would be inundated by a 1:**[50]**100 year flood or storm event.”.

Amendment of section 17 of Act 24 of 2008

13. Section 17 of the principal Act is hereby amended by the substitution in paragraph (f) for subparagraph (ii) of the following subparagraph:

“(ii) temporarily depositing objects and materials washed up by **[the sea or tidal waters]** coastal waters.”.

Amendment of section 18 of Act 24 of 2008

14. Section 18 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Coastal access land **[is]** designated in terms of subsection (1) is automatically subject to a public **[access]** servitude **[in favour of the local municipality within whose area of jurisdiction it is situated and]** in terms of which members of the public may use that land to gain access to coastal public property.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) No land within a port or harbour, defence or other strategic facility may be designated as coastal access land without the consent of the Minister responsible for that facility.”; and

(c) by the addition after subsection (5) of the following subsections:

“(6) If a municipality fails to designate strips of land as coastal access land in terms of subsection (1), the MEC, and failing the MEC, the Minister, may designate such access land by notice in the *Gazette*.

(7) The MEC may not take any measures under subsection (6) without first consulting the municipality and giving it a reasonable opportunity to make representations.

(8) The Minister may not take any measures under subsection (6) without first consulting the municipality and the relevant MEC and giving them a reasonable opportunity to make representations.

(9) Each municipality approving the rezoning, subdivision or development of a land unit within or abutting on coastal public property must ensure that adequate provision is made in the conditions of approval to secure public access to that coastal public property.”.

Amendment of section 19 of Act 24 of 2008

15. Section 19 of the principal Act is hereby amended by the substitution for the introductory paragraph of the following paragraph:

“Before designating land as coastal access land or withdrawing any such designation, a municipality, the MEC or Minister, as the case may be, must—”. 5

Amendment of section 22 of Act 24 of 2008

16. Section 22 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in this section, if such power relates to any part of an area that— 10

- (a) is a national protected area as defined in the Protected Areas Act;
- (b) straddles a coastal boundary between two provinces; or
- (c) extends up to, or straddles, the borders of the Republic.”.

Amendment of title to Part 7 of Chapter 2 of Act 24 of 2008 15

17. The title to Part 7 of Chapter 2 of the principal Act is hereby substituted for the following title:

“Coastal [set-back] management lines”.

Amendment of section 25 of Act 24 of 2008

18. The following section is hereby substituted for section 25 of the principal Act: 20

“Establishment of coastal [set-back] management lines

25. (1) An MEC must [in regulations published] by notice in the *Gazette* [—

- (a)] establish or change coastal [set-back] management lines— 25
 - [i](a) to protect coastal public property, private property and public safety;
 - [ii](b) to protect the coastal protection zone;
 - [iii](c) to preserve the aesthetic values of the coastal zone; or
 - [iv](d) for any other reason consistent with the objectives of this Act[; 30

and].
 [(b)](1A) An MEC may, in regulations published in the *Gazette*, prohibit or restrict the building, erection, alteration or extension of structures that are wholly or partially seaward of [that] a coastal [set-back] management line.

(1B) When establishing coastal management lines in terms of subsection (1), the MEC must consider the location of immovable property and the ownership and zonation of vacant land. 35

(2) Before making or amending [the regulations] a notice referred to in subsection (1), or making the regulations referred to in subsection (1A), the MEC must— 40

- (a) consult with any local municipality within whose area of jurisdiction the coastal [set-back] management line is, or will be, situated; and
- (b) give interested and affected parties an opportunity to make representations in accordance with Part 5 of Chapter 6.

(3) A local municipality within whose area of jurisdiction a coastal [set-back] management line has been established must delineate the coastal [set-back] management line on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the [set-back] coastal management line in relation to existing cadastral boundaries. 45 50

(4) A coastal [set-back] management line may be situated wholly or partially outside the coastal zone.

“(5) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in this section, if such power relates to any part of an area that—

- (a) is a national protected area as defined in the Protected Areas Act;
- (b) straddles a coastal boundary between two provinces; or
- (c) extends up to, or straddles, the borders of the Republic.”.

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Amendment of section 26 of Act 24 of 2008

19. Section 26 of the principal Act is hereby amended by the addition of the following subsection:

“(6) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in subsection (1)(b) if such power relates to any part of an area that—

- (a) is a national protected area as defined in the Protected Areas Act;
- (b) straddles a coastal boundary between two provinces; or
- (c) extends up to, or straddles, the borders of the Republic.”.

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Amendment of section 27 of Act 24 of 2008

20. The following section is hereby substituted for section 27 of the principal Act:

“Determining and adjusting coastal boundary of coastal public property

27. [(1)] When determining or adjusting the inland coastal boundary of coastal public property, the Minister must take into account—

- (a) the dynamic nature of the shoreline;
- (b) the need to make appropriate allowance for—
 - (i) the periodic natural movements in the high-water mark; and
 - (ii) the erosion and accretion of the seashore;
- (c) the importance of ensuring the natural functioning of dynamic coastal processes and of extending the coastal boundaries of coastal public property to include the littoral active zone and sensitive coastal ecosystems, including coastal wetlands;
- (d) the potential effects of projected rises in sea-level; **[and]**
- (dA) any anthropogenic influences on dynamic coastal processes; and
- (e) any other factor that may be prescribed.

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[(2) The Minister may exclude any area from coastal public property for government purposes, by proclamation.

(3) Before excluding any area from coastal public property in terms of subsection (2), the Minister must consult with interested and affected parties in terms of Part 5 of Chapter 6.

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(4) The Minister may exclude any area from coastal public property for any other purpose with the ratification of Parliament.

(5) Land excluded from coastal public property forms part of state owned land.

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(6) The Minister may on application approve the reclamation of land subject to conditions. Such reclaimed land shall, unless excluded from coastal public property in terms of subsection (5), form part of coastal public property.

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(7) For purposes of this section, “government purposes” means the exercise of functions by an organ of state that are in the national interest or in the interest of national security but does not include donation, leases of more than 20 years or alienation by that organ of state.]”.

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Amendment of section 28 of Act 24 of 2008

21. Section 28 of the principal Act is hereby amended by the addition of the following subsection:

- “(4) The Minister, after consultation with the relevant MEC, must exercise the powers and perform the functions granted to the MEC in subsections (2) and (3), if such power relates to any part of an area that— 5
- (a) is a national protected area as defined in the Protected Areas Act;
 - (b) straddles a coastal boundary between two provinces; or
 - (c) extends up to, or straddles, the borders of the Republic.”.

Amendment of section 33 of Act 24 of 2008

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22. Section 33 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Minister, with the concurrence of the Minister responsible for water affairs, must within four years of the commencement of this Act **[prescribe]** publish by notice in the *Gazette* a national estuarine management protocol.”. 15

Amendment of section 34 of Act 24 of 2008

23. Section 34 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1)(b) of the full stop at the end of subparagraph (ii) and the substitution of a semicolon;
- (b) by the addition in subsection (1) of the following paragraphs: 20
 - “(c) if applicable, ensure that relevant legislation is enacted to implement an estuarine management plan; and
 - (d) submit an annual report to the Minister on the implementation of the estuarine management plan, the legislation and any other matter which the Minister may prescribe.”; and 25
- (c) by the addition of the following subsection:

“(3) The report referred to in subsection (1)(d) must be tabled in Parliament annually.”.

Amendment of section 35 of Act 24 of 2008

24. Section 35 of the principal Act is hereby amended by the addition of the following subsection: 30

- “(4) The National Coastal Committee must report to the Minister annually on the matters in subsection (3) and that report must be tabled in Parliament.”.

Amendment of section 36 of Act 24 of 2008

25. Section 36 of the principal Act is hereby amended— 35

- (a) by the insertion after subsection (1) of the following subsection:

“(1A) The Minister must designate an official from the Department as the Chairperson of the National Coastal Committee.”;
- (b) by the substitution for subsection (2) of the following subsection: 40

“(2) [(a)] The persons to be appointed in terms of **[subsection]** subsections (1) and (1A) must, by virtue of the office that they hold or their expertise, be able to assist the National Coastal Committee in fulfilling its functions.

[(b) When appointing persons in terms of subsection (1), the Minister must ensure that the National Coastal Committee includes— 45

 - (i) persons with expertise in fields relevant to coastal management and coastal ecosystems;
 - (ii) a representative from each Provincial Coastal Committee;
 - (iii) one or more members representing municipalities in the coastal zone; 50
 - (iv) representatives of national government departments which play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment,

including representatives of the departments responsible for agriculture, minerals and energy, transport, public works, provincial and local government, land affairs, water affairs and forestry and trade and industry; and

- (v) **one or more members representing the management authorities of coastal protected areas.];”;** 5
- (c) by the insertion after subsection (2) of the following subsections:
 - “(2A) The Minister must appoint permanent members on the National Coastal Committee which must include but is not limited to—
 - (a) a representative from each Provincial Coastal Committee; 10
 - (b) representatives of national government departments which play a significant role in undertaking or regulating activities that may have an adverse effect on the coastal environment; and
 - (c) one or more members representing the management authorities of coastal protected areas. 15
 - “(2B) The Committee may, when required invite other persons to participate in the National Coastal Committee which may include—
 - (a) a representative of a national government department which is not a permanent member;
 - (b) a representative of a municipality that is affected by issues under consideration by the National Coastal Committee; 20
 - (c) persons with expertise in fields relevant to coastal management and coastal ecosystems; and
 - (d) any other person who may assist the National Coastal Committee in fulfilling its functions.”; and 25
- (d) by the deletion of subsections (4).

Amendment of section 37 of Act 24 of 2008

26. Section 37 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A member of the National Coastal Committee vacates office if he or she [— 30
- (a) **becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the National Coastal Committee;**
- (b) **ceases to hold any office necessary for his or her appointment to the National Coastal Committee; or**
- (c)] **tenders his or her resignation [and a Minister accepts it].”.** 35

Amendment of section 38 of Act 24 of 2008

27. Section 38 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) The Premier may assign **[some]** any of the functions referred to in subsection [(1)] (2) to any organ of state other than the lead agency in the 40 province.”.

Amendment of section 51 of Act 24 of 2008

28. Section 51 of the principal Act is hereby amended by the substitution for the introductory paragraph of the following paragraph:

- “**[An environmental implementation or environmental management]** Any 45 programme or plan in terms [of Chapter 3] of the National Environmental Management Act, any specific environmental management Act, an integrated development plan in terms of the Municipal Systems Act and a provincial or municipal land development plan must—”.

Amendment of section 56 of Act 24 of 2008

29. Section 56 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) A coastal planning scheme may only be established with the consent of—
- (a) the Minister, if the scheme applies to an area that extends into the sea further than 500 metres from the high-water mark or affects the protection or use of marine living resources; or
 - (b) the relevant Minister [of Transport] responsible for navigation of vessels on the sea or vessels entering or leaving a port or harbour, if the scheme [—
 - (i)] affects **[the navigation of vessels on the sea;]** or
 - (ii)] restricts such vessels **[entering or leaving a harbour].**”.

Amendment of section 59 of Act 24 of 2008

30. Section 59 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following paragraph:

“If the Minister or MEC has reason to believe that a person has, either prior to or after the commencement of this Act, carried out, is carrying out, or intends to carry out, an activity that has, is having, or is likely to have, an adverse effect on the coastal environment then, subject to subsection (2), he or she may issue a written coastal protection notice to the person responsible for that activity—”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Before exercising a power to issue a coastal protection notice under subsection (1), the Minister or MEC must—”.
- (c) by the deletion of subsection (3);
- (d) by the substitution for the second “(ii)” in paragraph (a) of subsection (4), of “(iii)”;
- (e) by the substitution for the introductory paragraph of subsection (5) for the following paragraph:

“If the Minister or MEC has reason to believe that a person has, either prior to or after the commencement of this Act, carried out, is carrying out, or intends to carry out, an activity that is having, or is likely to have, an adverse effect on the rights of natural persons to gain access to, use and enjoy coastal public property, the Minister or MEC may issue a written coastal access notice to that person—”; and
- (f) by the substitution for subsection (6) of the following subsection:

“(6) When issuing a notice contemplated in subsection (5), subsections (2) [, (3)] and (4) apply with the necessary changes.”.

Amendment of section 60 of Act 24 of 2008

31. Section 60 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 62 of Act 24 of 2008

32. Section 62 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 63 of Act 24 of 2008

33. Section 63 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) the estuarine management plans, coastal management programmes, coastal management lines and coastal management objectives applicable in the area;”;
- (b) by the deletion of subsection (1)(f);
- (c) by the deletion of the word “and” at the end of subsection (1)(g);

- (d) by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) **[the objects of this Act, where applicable.]** whether the development or activity—

- (i) is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations; 5
- (ii) is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17; 10
- (iii) is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;
- (iv) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated; 15
- (v) is likely to be significantly damaged or prejudiced by dynamic coastal processes;
- (vi) would substantially prejudice the achievement of any coastal management objective; or 20
- (vii) would be contrary to the interests of the whole community;”;

- (e) by the addition to subsection (1) of the following paragraphs:

“(i) whether the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land; 25

(j) whether the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area; and 30

(k) the objects of this Act, where applicable.”; and

- (f) by the deletion of subsections (2), (3) and (4).

Repeal of section 64 of Act 24 of 2008

- 34.** Section 64 of the principal Act is hereby repealed. 35

Amendment of heading to Part 4 of Act 24 of 2008

- 35.** The following heading is hereby substituted for the heading to Part 4 of Chapter 7:

“**[Coastal leases and coastal concessions on] Use of coastal public property**”.

Amendment of section 65 of Act 24 of 2008 40

- 36.** The following section is hereby substituted for section 65 of the principal Act:

“Award of [leases and concessions] coastal use permits on coastal public property

65. (1) [Subject to sections 67 and 95, no person may occupy any part of, or site on, or construct or erect any building, road, barrier or structure on or in, coastal public property except under and in accordance with a coastal lease awarded by the Minister in terms of this Chapter] The Minister may by notice in the *Gazette*— 45

(a) list activities that—

- (i) are prohibited within coastal public property; or 50
- (ii) require a coastal use permit from the Minister; and

(b) set different user charges for coastal use permits in terms of paragraph (a)(ii),

provided that such activities do not require environmental authorisation in terms of Chapter 5 of the National Environmental Management Act. 55

- (2) [Subject to section 95, no] No person may—
[claim an exclusive right to use or exploit any specific coastal resource
in any part of, or that is derived from, coastal public properly unless he
or she—
- (a) is empowered by national legislation to do so; or 5
 - (b) is authorised to do so in terms of—
 - (i) a coastal concession awarded by the Minister in terms of
this Chapter; or
 - (ii) an authorisation issued under the Marine Living Re-
sources Act] 10
 - (a) undertake an activity prohibited in terms of subsection (1)(a)(i);
 - (b) undertake an activity referred to in subsection (1)(a)(ii) without a
coastal use permit; or
 - (c) contravene any conditions determined in a coastal use permit referred
to in section 66. 15
- (3) A coastal [**lease or coastal concession**] use permit in terms of
subsection (1)(a)(ii) may, subject to section 66, be awarded by the Minister
either—
- (a) on application by a person; or
 - (b) if the Minister so determines in any specific case, through a prescribed
[**bid**] process. 20
- (4) An application for a coastal [**lease or coastal concession**] use permit
must be lodged in the prescribed manner.
- (5) A coastal [**lease or coastal concession**] use permit awarded in terms
of this Chapter does not relieve the [**lessee or concessionaire**] holder 25
thereof from the obligation to—
- (a) obtain any other coastal authorisation that may be required in terms of
this Act or any other authorisation in terms of other legislation; or
 - (b) comply with any other legislation.”. 30

Amendment of section 66 of Act 24 of 2008 30

37. The following section is hereby substituted for section 66 of the principal Act:

“Terms of coastal [leases and coastal concessions] use permits

- 66. [(1)]** A coastal [**lease or coastal concession**] use permit—
- (a) must be awarded for a fixed period of time of not more than 20 years
whereafter a new application must be made in terms of section 65(3) 35
and (4);
 - (b) is subject to any [**prescribed**] conditions [**or as may be**] determined
by the Minister [**in any specific case**]; and
 - (c) must provide for the payment by the [**lessee or concessionaire**] holder
thereof of a [**reasonable rent**] user charge determined by the Minister 40
in terms of section 65(1)(b).
- [(2)]** A coastal lease or coastal concession on land that is partially or
completely submerged by coastal waters may authorise the lessee to
use the water either exclusively or for specified purposes.]”.

Insertion of section 66A in Act 24 of 2008 45

38. The principal Act is hereby amended by the insertion after section 66 of the
following section:

“Leases in admiralty reserves

- 66A. (1)** Notwithstanding section 7(1)(e), a lease in an admiralty reserve,
prior to the commencement of this section, must be managed by the organ 50
of state empowered to do so in terms of the relevant local, provincial or
national legislation.
- (2) A lease referred to in subsection (1), must be managed as prescribed
by the Minister and until so prescribed, such leases must be managed in a

manner that is consistent with the purpose of coastal public property as set out in section 7A.”

Amendment of section 68 of Act 24 of 2008

39. The following section is hereby substituted for section 68 of the principal Act:

“Amendment, revocation, suspension or cancellation of authorisations 5

68. (1) An issuing authority may amend, revoke, suspend or cancel [an] a coastal authorisation issued in terms of this Act, if—

- (a) the holder of the coastal authorisation contravenes or fails to comply with a condition subject to which the coastal authorisation was issued;
- (b) it is in conflict with a coastal management programme or will significantly prejudice the attainment of a coastal management objective;
- (c) changes in circumstances require such amendment, revocation, suspension or cancellation; or
- (d) it is necessary to meet the Republic’s international obligations. 15

(2) An issuing authority must by written notice delivered to the holder of the coastal authorisation, or sent by registered post to the holder’s last known address, request the holder to make written representations within a period of 30 days from the date of the notice as to why the coastal authorisation should not be amended, revoked, suspended or cancelled, as the case may be. 20

(3) After the expiry of the period referred to in subsection (2) the issuing authority must consider the matter in the light of all relevant circumstances, including any representations made by the holder, and may—

- (a) revoke the coastal authorisation; 25
- (b) suspend the coastal authorisation for a period determined by the issuing authority;
- (c) cancel the coastal authorisation from a date determined by the issuing authority;
- (d) alter the terms or conditions of the coastal authorisation; or 30
- (e) decide not to amend, revoke, suspend or cancel the coastal authorisation.

(4) Notwithstanding subsections (2) and (3), the issuing authority may, whenever it is in the interests of the promotion, protection or utilisation on a sustainable basis of the coastal zone, at any time by written notice to the holder of [an] a coastal authorisation amend, revoke, suspend or cancel the coastal authorisation. 35

(5) If the issuing authority intends to exercise the powers under subsection (4), subsection (2) shall apply with the necessary changes.

(6) If the Minister or an issuing authority has reason to believe that it is urgently necessary to exercise powers under [subsections] subsection (1), (3) or (4) in order to protect the coastal environment or human health and well-being, the Minister or issuing authority may, by notice to the holder of [an] a coastal authorisation, temporarily suspend the coastal authorisation and then follow the procedure referred to in subsection (3). 40 45

(7) A competent authority, when exercising the power to amend, withdraw or suspend an environmental authorisation in terms of the National Environmental Management Act, must consider the factors referred to in subsections (1), (4), (5) and (6) with the necessary changes.”.

Amendment of section 69 of Act 24 of 2008

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40. Section 69 of the principal Act is hereby amended—

- (a) by the substitution for the term “general authorisation”, wherever it occurs, of the term “general discharge authorisation”; and

- (b) by the substitution for subsection (1) for the following subsection:
 “(1) No person may discharge effluent that originates from a source on land into coastal waters except in terms of a general discharge authorisation contemplated in subsection (2) or a coastal waters discharge permit issued under this section by the Minister after consultation with the Minister responsible for water affairs in instances of discharge of effluent into an estuary.”; 5
- (c) by the substitution for subsection (3) for the following subsection:
 “(3) Any person who wishes to discharge effluent into coastal waters in circumstances that are not authorised under a general discharge authorisation referred to in subsection (2) must apply to the Department for a coastal waters discharge permit.”; 10
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
 “Any person who at the commencement of this Act is discharging effluent into coastal waters and who is not authorised to do so in terms of a general discharge authorisation under subsection (2) must apply to the Department for a coastal waters discharge permit—”; 15
- (e) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: 20
 “The Minister, and in instances of discharge of effluent into an estuary, with the concurrence of the Minister responsible for water affairs, must, when deciding whether or not to issue a general discharge authorisation contemplated in subsection (2) or to grant an application for a coastal waters discharge permit, take into account all relevant factors, including—”; and 25
- (f) by the deletion of subsection (11).

Amendment of section 70 of Act 24 of 2008

41. Section 70 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (e) of the following paragraphs, respectively: 30
- “(a) incinerate at sea, including aboard a South African vessel, aircraft, platform or other structure, any waste or other material—
 (i) **within the coastal waters or the exclusive economic zone; or**
 (ii) **aboard a South African vessel**];
- (b) import into the Republic any waste or other material to be dumped or incinerated at sea, including aboard a South African vessel, aircraft, platform or other structure [**within the coastal waters or the exclusive economic zone**]; 35
- (e) except on the authority of a dumping permit granted under section 71—
 (i) dump at sea any waste or other material [**within the coastal waters or the exclusive economic zone**]; or 40
- (ii) dump from a South African vessel, aircraft, platform or other [**man-made**] structure at sea, any waste or other material [**on the high seas**]; or”.

Amendment of section 71 of Act 24 of 2008

42. Section 71 of the principal Act is hereby amended—
- (a) by deletion in subsection (3) of the word “or” at the end of paragraph (f), the insertion of the word “or” at the end of paragraph (g) and the addition of the following paragraph: 50
 “(h) waste or other material which may be prescribed.”; and
- (b) by the substitution for subsection (5) of the following subsection:
 “(5) [A] The Minister, may issue a dumping permit [**must be issued**] for a [**specified**] period of not more than [**two**] five years [**but may be renewed once for a period of not more than two years**] whereafter a new application must be made.” 55

Amendment of section 74 of Act 24 of 2008

43. Section 74 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“A person who is dissatisfied with any decision taken to issue, refuse, amend, suspend or cancel **[an] a coastal** authorisation, may lodge a written appeal against that decision with—”. 5

Amendment of section 79 of Act 24 of 2008

44. Section 79 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 10

“(h) passes off, uses, alters or has in possession any altered or false document purporting to be **[an] a coastal** authorisation; **[or]**”;

(b) by the substitution for the full stop at the end of paragraph (i) of subsection (1) of a semi-colon, and the addition of the following paragraphs:

“(j) reclaims land from coastal waters without authorisation of the Minister in terms of sections 7B and 7C; 15

(k) utilises reclaimed land in contravention of sections 7B and 7C;

(l) charges fees in contravention of section 13(3)(a) and (b);

(m) conducts an activity that is prohibited in terms of section 65(1)(a)(i); 20

(n) fails to comply with a verbal directive issued by the Minister or MEC in terms of section 92(1); or

(o) fails to comply with section 96(1).”;

(c) by the deletion in subsection (2) of the word “or” at the end of paragraph (b) and the addition of the following paragraphs: 25

“(d) constructs, maintains or extends any structure, or takes other measures on coastal public property to prevent or promote erosion or accretion of the seashore in contravention of section 15(2);

(e) fails to comply with a coastal protection notice or access notice issued in terms of section 59; 30

(f) conducts an activity without a coastal authorisation required in terms of this Act;

(g) fails to comply with the conditions of a coastal authorisation;

(h) fails to comply with section 95(1);

(i) allows any other person to do, or to omit to do, anything which is an offence in terms of paragraph (a), or (c) to (h); 35

(j) prevents access to coastal public property in contravention of section 13(1A); or

(k) contravenes any other provision of this Act which is not referred to in subsections (1) or (2).”; and 40

(d) by the deletion of subsections (3) and (4).

Amendment of section 80 of Act 24 of 2008

45. The following section is hereby substituted for section 80 of the principal Act:

“Penalties

80. (1) A person who is **[guilty] convicted** of a category one offence referred to in section 79(1) may be sentenced to a fine of up to R5 000 000 or to imprisonment for a period of up to ten years, or to both such fine and imprisonment. 45

(2) A person who is **[guilty] convicted** of a category two offence referred to in section 79(2) may be sentenced on a first conviction for that offence to a fine of up to **[R500 000] R2 000 000** or to imprisonment or community service for a period of up to five years, or to both such fine **[,] and** imprisonment or community service. 50

[(3) A person who is guilty of a category three offence referred to in section 79(3) may be sentenced on a first conviction for that offence to 55

a fine of up to R50 000 or community service for a period of up to six months or to both such fine and community service.]

(4) A person who is **[guilty]** convicted of a category two **[or three]** offence may be sentenced on a second or subsequent conviction for that offence as if he or she has committed a category one **[or two]** offence. 5

(5) A court that sentences any person—

(a) to community service for an offence in terms of this Act must impose a form of community service which benefits the coastal environment, unless it is not possible to impose such a sentence in the circumstances; 10

(b) for any offence in terms of this Act, may suspend, revoke or cancel **[an]** a coastal authorisation granted to the offender under this Act.

(6) If a person is found guilty of an offence in the High Court, the penalty limitations in subsections (1), (2) and (4) do not apply a higher penalty may be imposed.” 15

Amendment of section 81 of Act 24 of 2008

46. The following section is hereby substituted for section 81 of the principal Act:

“Jurisdiction of courts

81. (1) [If a person is charged with the commission of an offence in terms of this Act on, in or above coastal waters, a court whose area of jurisdiction abuts on the coastal waters has jurisdiction in the prosecution of the offence] Any act or omission in contravention of any of the provisions of this Act which is committed— 20

(a) by any person in, on or above coastal waters; 25
(b) outside coastal waters by any citizen of the Republic or any person ordinarily resident in the Republic; or
(c) by any person on board any South African vessel, shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic. 30

(2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.” 35

Amendment of section 83 of Act 24 of 2008

47. Section 83 of the principal Act is hereby amended— 35

(a) by the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) the procedures to be followed with the lodging and consideration of applications for coastal authorisations, including—

- (i) the conditions with which applicants must comply before or after the lodging of their applications; 40
- (ii) the application fees to be paid;
- (iii) the authorities that will be competent to issue the different categories of **[authorisation]** coastal authorisations;
- (iv) the consultation procedures to be followed with organs of state and other interested and affected parties; 45
- (v) the authorities whose consent is required before **[permits]** coastal authorisations may be issued; and
- (vi) the procedures for objecting to such applications;
- (vii) the powers of issuing authorities when considering and deciding such applications; 50
- (viii) the factors that must be taken into account when deciding applications;
- (ix) the circumstances in which applications must be refused or may be approved and guidelines as to the conditions on which permits may or must be issued; and 55

- (x) the **[bid]** process to be followed for the award of coastal **[leases and coastal concessions]** authorisations;”;
- (b) by the substitution in subsection (1) for paragraphs (h) to (l) of the following paragraphs:
 - “(h) the contents of coastal authorisations; 5
 - (i) the giving of security in respect of any obligation that may arise from carrying out activities authorised by **[permits, coastal leases or coastal concessions]** coastal authorisations, and the form of such security; 10
 - (j) the procedure to be followed in connection with the lodging and consideration of appeals in terms of Chapter 9, including—
 - (i) the fees to be paid;
 - (ii) the conditions with which appellants must comply before or after the lodging of their appeals;
 - [(iii) the powers of, and the procedure to be followed by, an MEC when considering and deciding such appeals;]** 15
 - (iv) the circumstances in which a temporary stay may be granted in the carrying out of notices in terms of section 59 or 60, or an amendment, revocation, suspension or cancellation of **[permits, leases or concessions]** coastal authorisations in terms of section 68; 20
 - (k) methods, procedures and conditions of enforcing compliance with coastal authorisations;
 - (l) the issuing and contents of notices to persons who have contravened or failed to comply with— 25
 - (i) a provision of this Act;
 - (ii) a coastal management programme; or
 - (iii) a condition of a **[permit, coastal lease or]** coastal **[concession]** authorisation;”;
- (c) by the substitution in subsection (1) for paragraph (r) of the following paragraph: 30
 - “(r) the issuing and contents of **[permits or licences]** coastal authorisations.”.

Amendment of section 84 of Act 24 of 2008

- 48.** Section 84 of the principal Act is hereby amended— 35
 - (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
 - “(e) coastal management lines, including the granting of permission for the erection, placing, alteration or extension of a structure that is wholly or partially seaward of a coastal **[set-back]** management line and the process to be followed for acquiring such permission, including the authority by whom, the circumstances in which and the conditions on which such permission may be given;”;
 - (b) by the addition of the following subsection:
 - “(3) The Minister, after consultation with the relevant MEC, must 45
 - make regulations in terms of subsections (1)(b), (c), (d) and (e), if such regulations relate to any part of an area that—
 - (a) is a national protected area as defined in the Protected Areas Act;
 - (b) straddles a coastal boundary between two provinces; or
 - (c) extends up to, or straddles, the borders of the Republic.”.

Amendment of section 85 of Act 24 of 2008

- 49.** Section 85 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 - “(d) provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to— 55
 - (i) imprisonment for a period not exceeding **[two]** five years;
 - (ii) an appropriate fine not exceeding R2 million; or
 - (iii) both such fine and imprisonment.”.

Amendment of heading to Part 2 of Act 24 of 2008

50. The following heading is hereby substituted for the heading of Part 2 of Chapter 11:

“Powers to be exercised by [Minister and] MEC”.

Repeal of section 87 of Act 24 of 2008

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51. Section 87 of the principal Act is hereby repealed.

Amendment of section 89 of Act 24 of 2008

52. Section 89 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The Minister— 10

(a) may not delegate a power or duty vested in the Minister—

(i) to make regulations; or

(ii) to publish notices in the *Gazette*; **[or**

(iii) **to appoint the members of the National Coastal Committee;**

and 15

(b) may withdraw by notice in writing any delegation made in terms of a provision of this Act **[or of a statute repealed by this Act].”**.

Amendment of section 90 of Act 24 of 2008

53. Section 90 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph: 20

“(d) establish **[set-back]** coastal management lines **[to implement or monitor compliance with provincial norms and standards].”**.

Amendment of section 91 of Act 24 of 2008

54. Section 91 of the principal Act is hereby amended by the deletion in subsection (1) of the word “or” at the end of paragraph (a), the insertion of the word “; or” at the end of paragraph (b) and the addition of the following paragraph: 25

“(c) an official within the MEC’s department.”.

Amendment of section 92 of Act 24 of 2008

55. Section 92 of the principal Act is hereby amended—

(a) by the substitution for the section heading of the following heading: 30

“**Urgent action by Minister or MEC**”;

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The Minister or MEC may issue a verbal directive to any responsible person to **[stay]** stop an activity if such activity poses—”; 35

and

(c) by the substitution for subsection (3) of the following subsection:

“(3) When issuing a verbal directive contemplated in subsection (1), the provisions of section 59(1)[, (3)] and (4) or 60(1)[, (3)] and (4) apply with the necessary changes.”. 40

Amendment of section 93 of Act 24 of 2008

56. Section 93 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister must prepare and regularly update a national report on the state of the coastal environment **[based on]**, which must include— 45

(a) information from provincial reports submitted to the Minister in terms of subsection (2); and

(b) a review on the status of each pipeline that discharges effluent into coastal waters in terms of section 69 and its impact on the coastal environment and progress on any other national responsibilities in this Act.” 50

Insertion of section 94A in Act 24 of 2008

57. The principal Act is hereby amended by the insertion after section 94 of the following section:

“Exemptions

94A. (1) The Minister may in writing exempt any person or group of persons or organ of state from a provision of this Act, provided that such exemption does not conflict with the objects of the Act. 5

(2) An exemption granted in terms of subsection (1) may—

(a) be subject to conditions;

(b) be subject to payment of a fee; and 10

(c) be amended or cancelled at any time by the Minister.

(3) Before making a decision in terms of this section, the Minister must consult with any organ of state that may be affected by such decision.”.

Amendment of section 95 of Act 24 of 2008

58. The following section is hereby substituted for section 95 of the principal Act: 15

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

95. (1) In order to enable the Minister to establish the nature and extent of existing uses within the coastal zone, the holder of a lease or right in terms of the Sea-shore Act, 1935 (Act No. 21 of 1935), or a lease within the admiralty reserve must, within 12 months of the commencement of this section, provide the Minister with a copy of the lease concluded in terms of the Sea-shore Act. 20

(2) If a lease under the Sea-Shore Act—

(a) relates to an activity that is not listed in terms of section 65(1)(a), that lease is no longer required and therefore lapses, and the activity may continue; 25

(b) relates to an activity which is prohibited by notice in terms of section 65(1)(a)(i), that activity must stop within a period of 180 days from the date of publication of such notice; or

(c) relates to an activity requiring a permit in terms of section 65(1)(a)(ii) application must be made for a coastal use permit in terms of section 65(3) within a period of 180 days of the publication of the notice listing such activities.”. 30

(3) If an application for a coastal use permit contemplated in subsection 2(c) is refused, that activity must stop within a period of 180 days of receipt of the refusal. 35

(4) Unless a person referred to in subsection (2)(c) is directed otherwise by a person acting in terms of this Act, it is not an offence for that person to continue with the activity if that person makes an application for a permit under section 65(3)(a) within 180 days as contemplated in subsection (2)(c) but has not yet been notified whether the application has been granted or refused.”. 40

Amendment of section 96 of Act 24 of 2008

59. The following section is hereby substituted for section 96 of the principal Act:

“Unlawful structures on coastal public property

(1) [Subject to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), and subsection (4), a] A person who, before this [Act] section took effect, had unlawfully constructed a building or other structure on coastal public property or who, when this [Act] section took effect, occupied a building or other structure unlawfully built on coastal public property must— 45 50

- (a) within 180 days of the publication of the *Gazette* notice contemplated in section 65(1)(a)(ii), apply for a coastal **[lease in terms of Chapter 7]** use permit if the activity is listed in terms of section 65(1)(a)(ii); or
- (b) within 180 days of the publication of the *Gazette* notice contemplated in section 65(1)(a)(i), demolish the building or structure and as far as reasonably possible, restore the site to its condition before the building or other structure was built, if the activity is prohibited in terms of section 65(1)(a)(i); and must notify the Department with proof of such demolition and restoration. 5
- (2) If a person referred to in subsection (1) applies for a coastal **[lease]** use permit in accordance with **[subsection (1)]** section 65(3)(a) and the application is refused by the Minister, that person must demolish the building or structure and, within a reasonable period, as determined by the Minister when refusing the application, as far as reasonably possible restore the site to its condition before the building or other structure was built. 10 15
- (3) If a person who in terms of subsection (1) or (2) is obliged to demolish the building or structure and to restore the site to its original condition, fails to do so within the period specified in subsection (1)(b) or specified by the Minister in subsection (2), the Minister **[or the MEC]** may, under section 60, issue a written repair or removal notice to that person. 20
- (3A) If appropriate, before issuing a notice as contemplated in subsection (3), the Minister must consider the effect this may have on the elderly, children, disabled persons and households headed by women, particularly in low-income households.
- (4) This section does not affect— 25
- (a) any legal proceedings that commenced prior to the commencement of this **[Act]** section to enforce any prohibition or restriction on construction or other activities in terms of any other law; or
- (b) any legal proceedings instituted after the commencement of this Act to enforce any notice served prior to the commencement of this section that required the addressee to vacate or demolish any building or structure that was constructed unlawfully; or]. 30
- [(c) any rights a person may have in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998).]** 35

Repeal of section 97 of Act 24 of 2008

60. Section 97 of the principal Act is hereby repealed.

Insertion of section 97A in Act 24 of 2008

61. The principal Act is hereby amended by the insertion after section 97 of the following section: 40

“Withdrawal of previous exclusions

97A. Any exclusion of an area from coastal public property in terms of section 27, prior to the repeal of that section, shall be of no force and effect and shall remain coastal public property to the extent defined in section 7.”.

Amendment of section 101 of Act 24 of 2008 45

62. The following short title is hereby substituted for the short title and commencement of the principal Act:

“Short title and commencement

101. This Act is called the National Environmental Management: Integrated Coastal Management Act, **[2007]** 2008, and takes effect on a date or dates determined by the President by proclamation in the *Gazette*.”. 50

Amendment of Arrangement of Sections of Act 24 of 2008

63. The Arrangement of Sections after the Preamble of the principal Act is hereby amended—

- (a) by the substitution for item 6 of the following item:
“6. **[Conflicts]** Interpretation and conflicts with other legislation”; 5
- (b) by the insertion after item 7 of the following items:
“7A. Purpose of coastal public property
7B. Reclamation of land for state infrastructure
7C. Reclamation of land for purposes other than state infrastructure”; 10
- (c) by the deletion of item 10;
- (d) by the substitution after item 24 of the following heading:

“Part 7

- Coastal [set-back] management lines**”; 15
- (e) by the substitution for item 25 of the following item:
“25. Establishment of coastal **[set-back] management lines**”; 20
- (f) by the deletion of item 64;
- (g) by the substitution for the heading after item 64 of the following heading:

“Part 4

- [Coastal leases and coastal concessions on] Use of coastal public property**”; 25
- (h) by the substitution for item 65 of the following item:
“65. Award of **[leases and concessions]** coastal use permits on coastal public property”; 30
- (i) by the substitution for item 66 of the following item:
“66. Terms of coastal **[leases and coastal concessions]** use permits”; 30
- (j) by the insertion after item 66 of the following item:
“66A. Leases in admiralty reserves”; 30
- (k) by the substitution after item 86 of the following heading:

“Part 2

- Powers to be exercised by [Minister and] MEC**”; 35
- (l) by the deletion of item 87;
- (m) by the insertion after item 94 of the following item:
“94A. Exemptions”; 40
- (n) by the deletion of item 97; and
- (o) by the insertion after item 97 of the following item:
“97A. Withdrawal of previous exclusions”.

Short title and commencement

64. This Act is called the National Environmental Management: Integrated Coastal Management Amendment Act, 2013, and comes into operation within six months of the date of publication in the *Gazette* as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996, or such earlier date as determined by proclamation by the President in the *Gazette*. 45

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1 The National Environmental Management: Integrated Coastal Management Amendment Bill, 2013 (“the Bill”), seeks to amend the National Environmental: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008), (“the Act”). The Act is a specific environmental management Act within the framework of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (“NEMA”). The Act was promulgated in 2008 and came into operation on 1 December 2009. Most of the amendments were identified through implementation of the Act and some originated through consultations with organs of state such as Transnet on the impact of the Act on their operations as discussed below.
- 1.2 The Act created the notion of ‘coastal public property’, which gives special status to South Africa’s territorial waters up to the high-water mark (beaches, the sea and the sea-bed) including admiralty reserves. In other words, everything that occurs below (seaward of) the high-water mark is part of coastal public property. Ownership of these natural assets is vested in the citizens and held in trust by the State. Due to its dynamic nature, it is critical to manage coastal public property to ensure long-term sustainability and the protection of people and their properties against the natural elements. As part of the management regime, coastal public property cannot be sold or leased. It is essential to prohibit sale of these natural assets. However, the current lease provisions are very restrictive and prohibit any activity on coastal public property without a lease from the Minister. The section dealing with leases and ownership of coastal public property have not been put into effect because the Act did not clearly deal with the impact of coastal public property on other organs of state that own assets and operate in that space. The Bill seeks to correct this.
- 1.3 Definitions and terminology needed to be revised and clarified. In addition, several gaps and textual errors presented themselves during the implementation of the Act. During the printing process, several textual errors occurred in the Act.

2. OBJECTS OF BILL

The purpose of the Bill is to—

- ensure that coastal public property does not impact on the ownership of assets and operations of other organs of state;
- expand the provisions on reclamation;
- simplify the administration of coastal access fee approvals;
- extend the powers of MECs to issue coastal protection notices and coastal access notices;
- simplify and amend powers relating to coastal leases including transitional arrangements;
- simplify the provisions relating to the National Coastal Committee;
- expand the powers of delegation by MEC’s;
- expand categories of activities requiring dumping permits;
- provide for exemptions;

- revise offences and increase penalties; and
- make corrections.

3. CLAUSE BY CLAUSE EXPLANATION

3.1 Ad clause 1 (Amendment of definitions)

Certain definitions are amended to clarify their meanings and usage. These include technical improvements to definitions such as “estuary”, “high water-mark”, and “land unit”. It is proposed that the scope of “coastal waters” be expanded by including the exclusive economic zone and the continental shelf. New definitions are proposed for insertion as a consequence of proposed amendments to the Act, e.g. the definitions for “access fee”, “reclamation” and “port”.

3.2 Ad clause 2 (Insertion of coastal protection zone in the objects clause)

It emerged from the public comments that the coastal protection zone was erroneously omitted from the objects of the Bill.

3.3 Ad clause 3 (Amendment of section 4)

This section has been amended to be consistent with the definition of coastal waters.

3.4 Ad clause 4 (Insertion of new subsection 4 in section 6 to clarify ownership of organs of state)

This clause clarifies the ownership and status of assets owned by organs of state like Transnet within coastal public property and that they can continue to operate within their mandate in this space.

3.5 Ad clause 5 (Amendment of section 7 — coastal public property)

3.5.1 The Act created the notion of ‘coastal public property’ (CPP), which comprises the territorial waters of South Africa up to the high-water mark and includes admiralty reserves. In other words, the beaches, sea and sea-bed which occur below the high-water mark form part of CPP. Section 11 of the Act (which is not yet in operation) vests ownership of these natural assets in the citizens to be held in trust by the State. Section 65 (also not yet in operation) prohibits occupation of CPP without a lease from the DEA Minister. Coastal Public Property cannot be sold or leased. The Act did not clearly specify whether the infrastructure below the high water-mark also formed part of coastal public property and as a result, organs of state such as Transnet felt uncertain about the status of their assets within ports. Transnet, for example, leases out spaces on jetties which extend into the sea in order to fund port operations. They are concerned that the Act may be interpreted as divesting Transnet of its ownership and right to lease these jetties. In addition, they are concerned that the 20-year limitation on leases in section 65 limits their ability to secure finances through long-term leases. Clause 4 seeks to clarify that CPP **does not** include assets or infrastructure above or below the high water-mark. Hence the Act would not negatively impact on their leases as they would not be subject to the ownership and lease restrictions in sections 11 and 65.

3.5.2 The section has also been re-arranged so that it clearly states what does and does not form part of CPP.

3.6 Ad clause 6 (Insertion of the purpose of the coastal public property)

Public comments revealed that whilst the purpose of the coastal protection zone is fully covered in section 17 of the Act, there is no similar clause in respect of CPP. A new section is therefore proposed.

3.7 Ad clause 6 (Insertion of new clause — reclamation for purposes of state infrastructure)

Section 27(6) of the Act briefly addresses reclamation. The section was inserted late during the parliamentary process to address ad hoc concerns that arose when the Act was being considered by the Portfolio Committee. It was inappropriately placed and the current provision in section 27(6) is inadequate. The Bill proposes an insertion of two new comprehensive clauses in a more appropriate place in the Act. In addition, a definition for ‘reclamation’ was inserted under clause 1. This clause deals with the process to be followed in respect of reclamation for state infrastructure purposes.

3.8 Ad clause 6 (Insertion of new clause — reclamation for purposes other than for state infrastructure)

This clause sets out the process for reclamation for all reclamation other than for state infrastructures purposes. The main difference in the process is that these types of reclamations can only be approved by the Minister with the ratification of Parliament and once reclaimed, such land becomes CPP which is subject to a lease with the DEA Minister.

3.9 Ad clause 7 (Amendment to section 8 — consequential amendment)

This proposed amendment is a consequential amendment to the insertion of section 6A — purpose of CPP.

3.10 Ad clause 8 (deletion of section 10 relating to the designation of state land for certain purposes)

This clause contains very similar provisions to section 8 of the Act and appears to achieve the same purpose and was creating confusion. It is therefore being deleted as the provisions in section 8 can achieve the same objectives.

3.11 Ad clause 9 (Amendment of section 13 — access fees to coastal public property)

Section 13 of the Act currently obliges a person to obtain the approval of the Minister before charging access fees to CPP. The current provisions result in multiple individual applications being made to the Minister for permission to charge any access fees to CPP. Fee payers would include municipalities, boat-clubs, events organisers, etc. This would result in hundreds of applications which need to be responded to and delays in processing such applications may negatively impact on municipal revenue. To streamline the process and standardise access fees, it is proposed that the Minister publish a maximum fee and anyone who wishes to charge a higher fee would only then have to apply to the Minister, justifying the need. In addition, it is made clear that access fees are not to be confused with the costs of tickets for commercial activities that take place on or in CPP, e.g. a trip to seal island or a beach volley ball event. The term ‘access fee’ has therefore been defined. In addition an offence has been created in relation to blocking access to CPP.

3.12 Ad clause 10 (Amendment of section 14 — high-water mark)

After the stakeholder engagement on the high water mark, it became apparent, particularly from the Surveyor-General that the substitution of the high water-mark for a straight line boundary was no longer necessary as those properties that were bounded by the high-water mark would gain or lose land depending on the natural movement of the high-water mark. Allowing a property owner to determine a fixed line could potentially create unfair land grabs of CPP which would impact on the public's access to the beach. The relevant sections have therefore been deleted and the remaining sections clarify the consequences of the high-water mark moving inland.

3.13 Ad clause 11 (Amendment of section 15 — erosion and accretion)

This proposed amendment to section 15 of the Act is intended to align it with NEMA and other specific environmental Acts.

3.14 Ad clause 12 (Amendment of section 16 — composition of the coastal protection zone)

The proposed amendments to section 16 of the Act address textual corrections and a technical change to increase the surface area of flood prone areas as a consequence of climate change. Public comments pointed out that relevant parts of rivers were not part of the coastal protection zone and this is corrected through the proposed amendment to 16(1)(f). The proposed amendment to s16(1)(i) is intended to refer to flooding only from the sea and not from storms upstream from rivers. It is therefore limited to areas adjacent to the other categories of the coastal protection zone. If not, it could potentially cover areas of land that are nowhere near the sea. In addition, the 1:100 year flood line is more appropriate in light of climate change.

3.15 Ad clause 13 (Amendment of section 17 — terminology)

The proposed amendment seeks to clarify terminology. The term “coastal waters” is more accurate in the context.

3.16 Ad clauses 14 and 15 (Amendment of sections 18 and 19 — designation of coastal access strips)

Currently, there is no power to intervene if a municipality fails to designate coastal access land which is an essential function in complying with the objectives of the Act. Given our strategic focus on access, it is important to empower the MEC and failing the MEC, the Minister to act if a municipality fails to. Provisions clarifying the nature of the public servitude which is created once access strips are designated are also amended.

3.17 Ad clause 16 (Amendment to section 22 — powers of Minister to excise protected areas)

This clause has been amended to insert the wording from section 87 which allows the Minister to exercise powers in relation to excising national protected areas from the coastal protection zone.

3.18 Ad clauses 18 (Amendment of section 25 — Coastal set-back lines)

There was confusion between EIA development set-back lines (in terms of the NEMA Environmental Impact Assessment (EIA) regulations) and coastal setback lines under this Act. It is therefore proposed that ‘coastal setback-lines’ be changed to ‘coastal management lines’. The proposed amendments to these sections are consequential to that change. In addition, a few problems were raised during the public consultations. The Act, in section 26, provides that coastal boundaries may be determined or adjusted by notice in the *Gazette*. However, section 25 of the Act provides that the MEC must in

regulations establish or change coastal (set-back) management lines. Provinces point out that they are currently experiencing difficulties and have to amend some of their set-back lines. It is in fact easier to withdraw or amend notices as opposed to amending regulations, it is therefore proposed that the MEC be given the power to publish a notice in the *Gazette* to establish or change coastal set-back lines, similar to the powers in section 26 (adjustment of boundaries). The MEC may then still by way of regulations prohibit or restrict the building of structures seaward of that coastal set-back line.

3.19 Ad clause 19 (Amendment of section 26 — insertion of Minister's powers in respect of the coastal protection zone)

This amendment inserts similar wording to what is contained in section 22 to make it clear that where such powers as described in section 26 are exercised in certain circumstances in the coastal protection zone, they must be exercised by the Minister.

3.20 Ad clause 20 (Amendment of section 27 — determining and adjusting the boundary of coastal public property)

3.20.1 During the Parliamentary process when enacting the Act, an attempt was made to resolve the issue relating to the status of Transnet's assets within CPP (see par. 2.2.4 above) by inserting a power to exclude areas from CPP with the ratification of Parliament. Such 'exclusion' was effected prior to the commencement of the Act, whereby certain portions of ports under the control of Transnet were excluded from CPP, which resulted in unintended and undesirable consequences for both Transnet and DEA. Transnet found itself in a worse position after the exclusion, as the ports which were previously CPP now became state-owned land, placing them in an equally precarious situation regarding their ownership status. From an environmental perspective, an unintended consequence of exclusion of an area of sea and sea-bed from CPP meant that the excluded portion of the sea and sea-bed could be privately owned, thereby subverting the principle established in the Act — that the sea and sea-bed cannot be owned. It is therefore necessary to delete the provision empowering the Minister to exclude CPP, as clarity relating to what constitutes CPP has now been addressed in section 7 as amended.

3.20.2 The reclamation provision in section 27 of the Act was inserted late during the parliamentary process to address ad hoc concerns that arose when the Act was being considered by the Portfolio Committee. It was inappropriately placed and the current provision in section 27(6) of the Act is inadequate. Two new clauses have been drafted and more appropriate placed through an insertion of sections 7B and 7C.

3.21 Ad clause 21 (Amendment of section 28 — adjusting coastal boundaries)

This amendment inserts similar wording to what is contained in section 22 to make it clear that where such powers as described in section 26 are exercised in certain circumstances in the coastal protection zone, they must be exercised by the Minister.

3.22 Ad clauses 22 and 23 (Amendment of sections 33 and 34 on estuary management protocol and estuary management plans)

Section 33 was amended to change the terminology to reflect that the National Estuarine Management Protocol should be published in the *Gazette* by notice and not prescribed by regulations. Section 34 was amended to insert additional criteria when compiling a management plan and also inserted additional reporting criteria for monitoring progress on development and implementation of these plans.

3.23 Ad clauses 24 to 26 (Amendment of sections 35 - 37 — National Coastal Committee)

The sections relating to the National Coastal Committee have been revised to streamline the provisions and create more flexibility with the appointment of representatives. This flexibility will allow the functions to be performed by any existing forum such as a MINTEC working group.

3.24 Ad clauses 27, 28 and 29 (Amendment of sections 38, 51 and 56 — corrections and improvements to text)

The Bill proposes to correct a cross-reference in section 38 of the Act, align the wording of section 51 with NEMA, and make a textual improvement to section 56 of the Act.

3.25 Ad clause 30 (Amendment of section 59 — extending powers of MECs)

The Act erroneously failed to give an MEC the power to issue coastal protection notices and coastal access notices. Clause 30 of the Bill proposes to correct that omission and to cover a loophole in the criteria for issuing such notices. In addition, the wording in section 59(3) of the Act appears to be in conflict with the powers of the MEC as it relates to delegations in terms of section 91. It is therefore proposed that section 59(3) be deleted.

3.26 Ad clause 31 (Amendment of section 60 — correction)

Section 60(3) of the Act erroneously gives the Minister the power to delegate a power to the MEC, while subsection (1) already assigns the original power to the MEC. The Amendment proposes to correct this. There is also a significant typographical error which will simultaneously be addressed.

3.27 Ad clause 32 (Amendment of section 62 — EIA report)

Section 62(2) of the Act requires an organ of state to first consider an environmental impact assessment report before authorising land to be used for activities within the coastal protection zone which may have an adverse effect on the coastal environment. Since the NEMA Environmental Impact Assessment (EIA) Regulations already cover activities which may have an adverse effect on the coastal environment, this section is unnecessary. In addition, it is unclear what is meant by an “environmental impact assessment report” and it is assumed to be a reference to the report under the EIA Regulations, although it is not clearly stated so. An EIA report is only one component of an environmental authorisation process so this terminology is inaccurate. It is therefore proposed to delete subsection (2).

3.28 Ad clause 33 (Amendment of section 63 — criteria for considering EIAs for coastal activities)

The criteria in section 63 of the Act have given rise to interpretational difficulties for competent authorities. The factors listed for which authorisation must be refused are so broad, that it could potentially prevent competent authorities from granting authorisations. The amendment proposes to address this problem by incorporating the exclusionary criteria as part of the general criteria to be taken into account by competent authorities when considering EIA applications.

3.29 Ad clause 34 (Amendment of section 64 — Minister's override)

The Bill proposes the deletion of section 64 of the Act. This section currently gives the Minister an override power over a competent authority to issue an environmental authorisation in certain circumstances, which creates a parallel process to the appeal process in NEMA and causes confusion.

3.30 Ad clauses 36 - 37 (Amendment of sections 65 and 66 — coastal leases and concessions)

The original need for coastal leases was to generate funds and to control activities within CPP. Section 66 of the Act, which provides for leases of CPP is administratively cumbersome, over-regulatory and has a potential unintended impact on other organs of state that operate within CPP. In addition, it is not practical to subject *every activity* on coastal public property to a lease as not all activities have impact and it would therefore serve no real environmental value. As a result, it was not put into operation when the Act commenced in 2009.

The Bill is proposing to replace the leases with coastal use permits whereby the Minister is authorised to list activities which require a permit, thereby removing the blanket requirement that all activities on CPP require a lease. It is intended to create a mechanism to only regulate certain activities which impact on CPP but which are not appropriately dealt with under other environmental legislation such as the NEMA Environmental Impact Assessment Regulations. The time limitation of 20 years has been retained as a maximum period for which a permit may be issued.

3.31 Ad clause 38 (Insertion of a new clause 66A — Leases in admiralty reserve)

Since admiralty reserve forms part of CPP, a clause needed to be inserted in the Act to determine how existing leases on admiralty reserve, which are primarily managed by Public Works, should be dealt with. The new section now indicates that such leases should continue to be managed by the appropriate authority but in accordance with the objects of the Act.

3.32 Ad clauses 39, 43 and 47 (Amendment of sections 68, 74, and 83)

These proposed amendments are consequential to the change in terminology from 'authorisation' to 'coastal authorisation' — see definitions. The term authorisation was causing confusion with EIA authorisations and was therefore proposed for amendment.

3.33 Ad clause 40 (Amendment of section 69 — consequential amendment)

The proposed amendment is a consequential amendment to the amendment to the definition of authorisation and the reporting with respect to pipelines is now covered under the section 93.

3.34 Ad clause 41 (Amendment to section 70)

The proposed amendment is a consequential to the amendment of the definition of 'coastal waters' and 'sea'. 'Coastal waters' currently covers the Republic's territorial waters (12nm) but excludes the exclusive economic zone — 200 nm (EEZ) and the continental shelf. It would mean therefore that cabling and pipelines etc. that require coastal authorisations would require no authorisation if they extend beyond the 12 nm. It was therefore considered necessary to extend it to the EEZ and the continental shelf.

3.35 Ad clause 42 (Amendment of section 71 — dumping permits)

There are a limited number of activities for which the Minister may issue dumping permits under section 71 of the Act. There may be circumstances where additional categories are required as changes occur in the international regime which governs dumping, namely the London Dumping Protocol 1996, to which South Africa is a signatory. The amendment proposes to give the Minister the power to prescribe in regulations, additional waste and other material that may be permitted without the need to continuously amend the Act as and when new categories occur. The amendment also proposed to clarify the time period for validity of a permit which is ambiguous.

3.36 Ad clauses 44 - 46 (Amendment of section 79 — 81 offences and penalties)

There have been complaints that the penalties are inadequate and that there are gaps in the sentencing provisions. Sections 79 to 81 of the Act (offences and penalties) have been tightened up. There are now only two categories of offences instead of three and the sentences for category two offences have been increased. In addition, the proposed amendment to section 81 deals with extra-territorial jurisdiction of South African courts and improves the text regarding the jurisdiction of courts in respect of offences in terms of the Act.

3.37 Ad clause 48 (Amendment of section 84 — terminology)

The proposed amendment is consequential to the amendment of the definition of “coastal set-back lines”.

3.38 Ad clause 49 (Amendment to section 85 — penalties for regulations)

There was initially no maximum limit set for offences in regulations this has now been inserted to provide certainty as to the upper limit of the Minister’s powers.

3.39 Ad clause 51 (Amendment of section 87 — Powers of the Minister)

This section is proposed for deletion as a consequential amendment to inserting these provisions in each section eg. section 22, where powers relating to the coastal protection zone must be exercised by the Minister.

3.40 Ad clause 52 (Amendment of section 89 — delegations by the Minister)

This clause clarifies the powers which the Minister may not delegate.

3.41 Ad clause 53 (Amendment of section 90 — correction)

The proposed amendment is consequential to the amendment of the definition of ‘coastal set-back lines’. It also proposes a correction to subsection (1)(d) of the section for clarity purposes.

3.42 Ad clause 54 (Amendment of section 91 — delegations by MECs)

The Act erroneously does not allow an MEC to delegate to an official within his or her department. This amendment proposes to correct this.

3.43 Ad clause 55 (Amendment of section 92 — urgent action by Minister)

Following requests during the public comment period, it was considered appropriate to give this power to the MEC to allow for improved efficiency in urgent situations, hence the proposed amendment to subsection (1). This proposed amendment to subsection (3) is consequential to the proposed amendment to section 59 of the Act.

3.44 Ad clause 56 (Amendment to section 93 — reporting)

This section has been amended to create more specific provisions with regards to reporting by the Minister.

3.45 Ad clauses 57 (Proposed insertion of new clause — section 94A)

There is a probability that many organs of state may require exemptions from certain provisions. Unforeseen situations need to be accommodated without the need for an unnecessary statutory amendment. It is therefore proposed that an exemption provision be inserted so as not to hinder service delivery. The provision is similar to that in the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which has been approved by the courts.

3.46 Ad clause 58 (Amendment to section 95 — transitional provisions relating to leases)

Since it is proposed that the concept of leasing in section 65 be replaced with coastal use permits for activities which are yet to be listed, there is no need to keep existing leases alive. The reason being that some activities which are currently governed by leases may not require a permit in terms of the new section 65. An example of this is the use of slipways, for which there is no real need for a permit as they would already have undergone environmental scrutiny through the Environmental Impact Assessment process. The only value therefore in asking for all existing leases, would be to assist the Department in determining which activities currently under lease (in terms of the Sea-Shore Act, 1935 (Act No. 21 of 1935), would need to be listed as requiring a coastal use permit under the new section 65. It is therefore proposed that copies of all existing leases be submitted to the Minister within 12 months. In addition more specific subsections have been inserted to clearly indicate what process a person must follow when the section comes into effect and whether their lease lapses or whether they must apply for a permit.

3.47 Ad clause 59 (Amendment to section 96 — transitional provisions)

The proposed amendments are consequential to the amendment to section 65 of the Act — i.e. the new regime of coastal use permits which replace leases.

3.48 Ad clause 60 (correction by deleting section 97)

A transitional provision based on earlier versions of the Act, which were subsequently changed, was erroneously retained and is creating confusion. Section 97 currently saves activities which were previously listed in a schedule. It was subsequently decided to integrate these activities with the NEMA EIA provisions and this section no longer serves a purpose.

3.49 Ad clause 61 (Proposed insertion of new section — section 97A)

Parliament excluded certain portions of ports from CPP prior to the Act commencing in 2009. The exclusion had unintended and undesirable consequences for both Transnet and DEA. Transnet found itself in a worse position after the exclusion, as the ports which were previously CPP now became state-owned land, placing them in an equally precarious situation regarding their ownership status. From the environmental perspective, an unintended consequence of exclusion of an area of sea and sea-bed from CPP meant that the excluded portion of the sea and sea-bed could be privately owned, thereby subverting the principle established in the Act — that the sea and sea-bed cannot be owned and is held in trust by the State. It is necessary to nullify that exclusion in the legislation, as section 7 of the Act dealing with CPP, now clearly excludes port structures/assets from CPP and there is no longer a need for exclusions from CPP. It is important to retain the principle that the sea and sea-bed is not capable of ownership and is held in trust by the State. Allowing for exclusion subverts this principle.

3.50 Ad clause 62 (Amendment of section 101 — short title and commencement)

This clause proposes a typographical amendment to the short title of the Act.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

- Department of Public Enterprises
- TRANSNET

5. IMPLICATIONS FOR VULNERABLE GROUPS

None

6. FINANCIAL IMPLICATIONS FOR STATE

None

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within a functional area listed in Schedule 4 to the Constitution, namely “environment”.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.