

REPUBLIC OF SOUTH AFRICA

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# **NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76);  
explanatory summary of Bill published in Government Gazette No. 35988 of  
21 December 2012)  
(The English text is the official text of the Bill)*

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(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

**[B 8—2013]**

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

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

**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 abolish 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.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**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 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];”;
- (b) by the deletion of the definition of “authorisation”;

- (c) by the substitution for the definition of “coastal activities” of the following definition:
- “**‘coastal activities’** means [coastal] activities listed or specified in terms of Chapter 5 of the National Environmental Management Act which take place—
- (i) in the coastal zones[:]; or
- (ii) outside the coastal zone but have or are likely to have a direct impact on the coastal zone;”;
- (d) by the insertion after the definition of “coastal activities” of the following definition:
- “**‘coastal authorisation’** means an authorisation under this Act, and includes the authorisation to reclaim land in terms of section 7A, 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 authorisation;”;
- (e) by the deletion of the definition of “coastal concession”;
- (f) by the deletion of the definition of “coastal lease”;
- (g) by the insertion after the definition of “coastal management” of the following definition:
- “**‘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;”;
- (h) 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;”;
- (i) by the deletion of the definition of “coastal set-back line”;
- (j) 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], territorial waters or exclusive economic zone of the Republic referred to in sections 3 [and], 4 and 7 of the Maritime Zones Act, 1994 (Act No.15 of 1994), respectively; and
- (b) subject to section 26 of this Act, [any] an estuary;”;
- (k) by the substitution for the definition of “coastal zone” of the following definition:
- “**‘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;”;
- (l) 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;
- (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] and
- (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;”;
- (m) by the substitution for the definition of “general authorisation” of the following definition:
- “**‘general discharge authorisation’** means an authorisation under section 69(2);[{}];”;
- (n) by the insertion after the definition of “general authorisation” of the following definition:

- “**‘harbour’** means a port or harbour proclaimed in terms of any law and managed by an organ of state;”;
- (o) by the substitution for the definition of “high-water mark” of the following definition:
- “**‘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;”;
- (p) by the substitution for the definition of “land development plan” of the following definition:
- “**‘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;”;
- (q) by the insertion after the definition of “Land Survey Act” of the following definition:
- “**‘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);”;
- (r) by the substitution for the definition of “Minister” of the following definition:
- “**‘Minister’** means the Minister [**of Environmental Affairs and Tourism**] responsible for environmental affairs;”;
- (s) by the substitution for the definition of “municipality” of the following definition:
- “**‘municipality’**—
- (a) means a metropolitan[, or] district [**or local**] municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); or
- (b) in relation to the implementation of a provision of this Act in an area which falls within both a local municipality and a district municipality, means—
- (i) the district municipality; or
- (ii) the local municipality, if the district municipality, by written agreement with the local municipality, has assigned the implementation of that provision in that area to the local municipality;”;
- (t) by the insertion after the definition of “provincial lead agency” of the following definition:
- “**‘reclamation’** means the process of artificially creating new land from coastal waters, and includes the creation of an island or peninsula, but excludes beach replenishment by sand pumping, and “reclaim” has a corresponding meaning;”;
- (u) by the substitution for the definition of “sea” of the following definition:
- “**‘sea’** means—
- (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—
- (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;”;
- (v) by the deletion of the word “and” after the definition of “Waste Assessment Guidelines”.

## 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”.

#### **Insertion of section 6A in Act 24 of 2008**

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

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##### **“Purpose of coastal public property**

**6A.** Coastal public property is established for the following purposes:

- (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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#### **Amendment of section 7 of Act 24 of 2008**

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

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##### **“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 subsection (2)(f), 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 immovable structure, or part of an immovable structure, including harbour installations and infrastructure, 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;
  - (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; or
  - (e) any land or structure located within an admiralty reserve that is subject to a lawful lease from the State.”.

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#### **Insertion of section 7A in Act 24 of 2008**

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

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### “Reclamation of land from coastal waters

**7A.** (1) No person may reclaim land unless authorised by the Minister.

(2) The Minister may, on application, approve reclamation, and such authorisation may be subject to any conditions or title deed restrictions that the Minister may deem necessary.

(3) When the Minister considers an application and imposes any condition or restriction referred to in subsection (2), the Minister must consider—

- (a) whether the applicant has an authorisation in terms of Chapter 5 of the National Environmental Management Act;
- (b) whether the purpose of the reclamation is for the development of state infrastructure by an organ of state or for private commercial gain; and
- (c) whether there is any alternative land available.

(4) Land reclaimed in terms of subsection (2) forms part of state-owned land which may be alienated in terms of the applicable legislation.

(5) An application for reclamation must record the purpose for which the land is to be reclaimed.

(6) 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.

(7) 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 8 of Act 24 of 2008

**6.** Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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;**
- (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 6A.”.**

### Amendment of section 11 of Act 24 of 2008

**7.** Section 11 of the principal Act is hereby amended—

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

“(2) **[Coastal]** Subject to subsection (3), coastal public property is inalienable and cannot be sold, attached or acquired by prescription and rights over it cannot be acquired by prescription.”; and

- (b) by the addition of the following subsection:

“(3) No person may use or exploit or claim a right to use or exploit any natural resource in any part of, or that is derived from, coastal public property, unless that person is authorised to do so by national legislation.”.

### Amendment of section 13 of Act 24 of 2008

**8.** Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:

“(3) **(a)** No fee may be charged for access to coastal public property without the approval of the Minister.

**(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).

- (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
- (b) by the substitution for subsection (5) of the following subsection:
- “(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 harbour **[or proclaimed fishing harbour]**.”.

#### Amendment of section 14 of Act 24 of 2008

9. 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—**
- (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.]
- 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);
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
- “If the high-water mark moves inland of the boundary line of a 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 land unit—”; and
- (d) by the substitution for subsection (6) of the following subsection:
- “(6) If **[accretion occurs, whether as a result of natural processes or human activities, land which formed part of the seashore when this Act took effect and which subsequently becomes situated inland of the high-water mark as a result of a change in the position of the high-water mark, remains coastal public property, and does not become part of any adjoining property unless the property is bounded by the high-water mark or extends to a stated distance from]** the high-water mark moves seaward of the boundary line of a land unit due to the accretion of the coast—
- (a) the owner of that land unit bounded by the high-water mark or a stated distance from the high-water mark when this Act took effect, gains ownership of any portion of that land unit that is situated above the high-water mark; or
- (b) the owner of a land unit bounded by a straight line boundary when this Act took effect, gains ownership of that portion of the land unit inland of the straight line boundary.”.

#### Amendment of section 15 of Act 24 of 2008

10. 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, or any other law.”.

**Amendment of section 16 of Act 24 of 2008****11. 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 substitution in subsection (1) for paragraph (f) of the following paragraph:
 

“(f) any coastal wetland, lake, lagoon **[or]**, dam or the part of a river which is situated wholly or partially 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****12. 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****13. 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 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.”; and
- (b) 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****14. 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—”.



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

15. 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

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

**“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**— 10

[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[; 15  
**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**. 20

(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—

(a) consult with any **[local]** municipality within whose area of jurisdiction the coastal **[set-back] management line** is, or will be, situated; and 25

(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 30  
scheme in order to enable the public to determine the position of the **[set-back] coastal management line** in relation to existing cadastral boundaries.

(4) A coastal **[set-back] management line** may be situated wholly or partially outside the coastal zone.”. 35

## Amendment of section 27 of Act 24 of 2008

17. 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— 40

(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; 45

(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 50

(e) any other factor that may be prescribed.

**[(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.

(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.

(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.

(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.]”.

#### **Amendment of section 31 of Act 24 of 2008**

18. The following section is hereby substituted for section 31 of the principal Act:

##### **“Making coastal boundaries on zoning maps**

31. If the Minister, an MEC or a municipality determines or adjusts a coastal boundary in accordance with section 26, a [local] municipality within whose area of jurisdiction the coastal boundary is situated must delineate that coastal boundary on a map or maps that form part of its zoning scheme in order to enable the public to determine the position of the coastal boundary in relation to existing cadastral boundaries.”.

#### **Repeal of sections 35, 36 and 37 of Act 24 of 2008**

19. Sections 35, 36 and 37 of the principal Act are hereby repealed.

#### **Amendment of section 38 of Act 24 of 2008**

20. 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 province.”.

#### **Amendment of section 39 of Act 24 of 2008**

21. Section 39 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) advise the MEC[,] and the provincial lead agency [and the National Coastal Committee] on matters concerning coastal management in the province.”.

#### **Amendment of section 42 of Act 24 of 2008**

22. Section 42 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any [local] municipality that has jurisdiction over any part of the coastal zone may establish a coastal committee for the municipality and, subject to subsection (4), determine its powers, which may include the power to establish local subcommittees of the municipal coastal committee.”.

#### **Amendment of section 51 of Act 24 of 2008**

23. 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 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—”.

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#### Amendment of section 56 of Act 24 of 2008

24. 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 harbour, if the scheme [—
    - (i)] affects [the navigation of vessels on the sea;] or
    - (ii)] restricts such vessels [entering or leaving a harbour].”.

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#### Amendment of section 59 of Act 24 of 2008

25. 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 deletion of subsection (3);
- (c) by the substitution for the second “(ii)” in paragraph (a) of subsection (4), of “(iii)”;
- (d) 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
- (e) 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.”.

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#### Amendment of section 60 of Act 24 of 2008

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

#### Amendment of section 62 of Act 24 of 2008

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

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#### Amendment of section 63 of Act 24 of 2008

28. 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);

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- (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—
- (aa) 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;
- (bb) 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;
- (cc) 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;
- (dd) is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
- (ee) is likely to be significantly damaged or prejudiced by dynamic coastal processes;
- (ff) would substantially prejudice the achievement of any coastal management objective; or
- (gg) 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;
- (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
- (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**

**29.** Section 64 of the principal Act is hereby repealed.

#### **Amendment of heading to Part 4 of Act 24 of 2008**

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

**“Coastal [leases and coastal concessions] use permits on coastal public property”.**

#### **Amendment of section 65 of Act 24 of 2008**

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

**“Award of [leases and concessions] 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*—**

- (a) list activities that—
- (i) are prohibited within coastal public property; or
- (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.

- (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
  - (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 Resources Act]
  - (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.
- (3) A coastal [lease or coastal concession] use permit in terms of subsection (1)(a)(ii) may 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.
- (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 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.”.

#### Amendment of section 66 of Act 24 of 2008

32. 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], but may be renewed once, whereafter a new application must be made in terms of section 65(3) 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 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.]”.

#### Amendment of section 68 of Act 24 of 2008

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

##### “Amendment, revocation, suspension or cancellation of authorisations

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.

(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. 5

(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— 10

- (a) revoke the coastal authorisation; 10
- (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 15
- (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. 20

(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). 30

(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** 35

**34.** 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 deletion of subsection (11).

#### **Amendment of section 70 of Act 24 of 2008** 40

**35.** 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:

- “(a) incinerate at sea, including aboard a South African vessel, aircraft, platform or other structure, any waste or other material— 45
  - (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]**; 50
- (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
  - (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

36. 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: 5  
 “(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 years [but] and may [be renewed once] renew it for a further period of not more than two years, 10  
 whereafter a new application must be made in terms of subsection (1).”.

### Amendment of section 74 of Act 24 of 2008

37. 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, 15  
 suspend or cancel [an] a coastal authorisation, may lodge a written appeal against that decision with—”.

### Amendment of section 79 of Act 24 of 2008

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

- (a) by the substitution in subsection (1) for paragraph (h) of the following 20  
 paragraph:  
 “(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: 25  
 “(j) reclaims land from coastal waters without authorisation of the Minister in terms of section 7A(1);  
 (k) utilises reclaimed land in contravention of section 7A(2) or (5);  
 (l) charges fees in contravention of section 13(3)(a) and (b);  
 (m) conducts an activity that is prohibited in terms of section 30  
 65(1)(a)(i);  
 (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) 35  
 and the addition of the following paragraphs:  
 “(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 40  
 issued in terms of section 59;  
 (f) conducts an activity without a coastal authorisation required in terms of this Act; or  
 (g) fails to comply with the conditions of a coastal authorisation;  
 (h) fails to comply with section 95(1); 45  
 (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); or  
 (j) contravenes any other provision of this Act which is not referred to in subsection (1) or (2).”;
- (d) by the deletion of subsections (3) and (4). 50

**Amendment of section 80 of Act 24 of 2008**

39. 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. 5

(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. 10

**[(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 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.]** 15

(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) A court that sentences any person— 20  
 (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;  
 (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.”. 25

**Amendment of section 81 of Act 24 of 2008**

40. 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— 30

(a) by any person in, on or above coastal waters; 35  
 (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. 40

(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.”. 45

**Amendment of section 83 of Act 24 of 2008**

41. Section 83 of the principal Act is hereby amended—

(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— 50  
 (i) the conditions with which applicants must comply before or after the lodging of their applications;  
 (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;
  - (v) the authorities whose consent is required before **[permits]** coastal authorisations may be issued; 5
  - (vi) the procedures for objecting to such applications;
  - (vii) the powers of issuing authorities when considering and deciding such applications;
  - (viii) the factors that must be taken into account when deciding applications; 10
  - (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;
  - (x) the bid process to be followed for the award of coastal **[leases and coastal concessions]** authorisations;” 15
- (b) by the substitution in subsection (1) for paragraphs (h) to (l) of the following paragraphs:
- “(h) the contents of coastal authorisations;
  - (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; 20
  - (j) the procedure to be followed in connection with the lodging and consideration of appeals in terms of Chapter 9, including— 25
    - (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;]** 30
  - (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; 35
  - (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— 40
    - (i) a provision of this Act;
    - (ii) a coastal management programme; or
    - (iii) a condition of a **[permit, coastal lease or]** coastal **[concession]** authorisation;” and
- (c) by the substitution in subsection (1) for paragraph (r) of the following paragraph: 45
- “(r) the issuing and contents of **[permits or licences]** coastal authorisations.”.

#### Amendment of section 84 of Act 24 of 2008

42. Section 84 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph: 50
- “(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;”.

#### Amendment of section 85 of Act 24 of 2008

43. 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—

- (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.”.

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#### **Amendment of section 89 of Act 24 of 2008**

**44.** Section 89 of the principal Act is hereby amended—

- (a) by the deletion of subsection (3); and
- (b) by the substitution for subsection (5) of the following subsection:

“(5) The Minister—

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- (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**

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

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“(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**

**46.** 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:

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

#### **Amendment of section 92 of Act 24 of 2008**

**47.** Section 92 of the principal Act is hereby amended—

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

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“**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 an activity if such activity poses—”; and

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- (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.”.

#### **Amendment of section 93 of Act 24 of 2008**

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**48.** 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—**

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

45

- (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.”.

### Insertion of section 94A in Act 24 of 2008

49. 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

50. 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) A lease under the Sea-shore Act, 1935, shall continue for a period of 24 months after the commencement of this section and section 98, unless—

- (a) the terms of the lease provides for it to lapse earlier; or 25
- (b) the lease relates to an activity that is listed in terms of section 65(2) as—
  - (i) prohibited; or
  - (ii) requiring a permit.

(3) Unless a person referred to in subsection (2) 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 has made application for a permit under section 65(2) within 24 months of the commencement of this section but has not yet been notified whether the application has been granted or refused.”. 30 35

### Amendment of section 96 of Act 24 of 2008

51. Section 96 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

“(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 person who, before this Act took effect, had unlawfully constructed a building or other structure on coastal public property or who, when this Act took effect, occupied a building or other structure unlawfully built on coastal public property must, within 12 months of the commencement of this [Act] section, either— 40

- (a) apply for a coastal [lease in terms of Chapter 7] use permit if the activity is listed in terms of section 65(1); or 45
- (b) 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.

(2) If a person referred to in subsection (1) applies for a coastal [lease] use permit in accordance with subsection (1)(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. 50

(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 by the Minister, the Minister or the MEC may, under section 60, issue a written repair or removal notice to that person.”.

#### **Repeal of section 97 of Act 24 of 2008**

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

#### **Insertion of section 97A in Act 24 of 2008**

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

##### **“Withdrawal of previous exclusions**

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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**

54. The following short title is hereby substituted for the short title and commencement of the principal Act: 15

##### **“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*.”. 20

#### **Short title and commencement**

55. This Act is called the National Environmental Management: Integrated Coastal Management Amendment Act, 2013, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## **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’ (CPP), 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 CPP. 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 CPP to ensure long-term sustainability and the protection of people and their properties against the natural elements. As part of the management regime, CPP cannot be sold or leased for longer than 20 years and all leases must be concluded with the Minister of Water and Environmental Affairs (“the Minister”). It is essential to prohibit sale of these natural assets. However, the current lease provisions are very restrictive and prohibit any activity on CPP without a lease from the Minister. The section dealing with leases and ownership of CPP have not been put into effect because the Act did not clearly deal with the impact of CPP 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**

- 2.1 The purpose of the Bill is to—
  - ensure that CPP 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;
  - abolish 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 “reclamation” and “harbour”.

### 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 (Insertion of the purpose of CPP)**

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.

### 3.4 **Ad clause 4 (Amendment of section 7—CPP)**

- (a) The Act created the notion of 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 Minister. CPP cannot be sold or leased for longer than 20 years. The Act did not clearly specify whether the infrastructure below the high-water mark also formed part of CPP 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. Their leases are often longer than 20 years in order to secure funding. 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.
- (b) The section has also been re-arranged so that it clearly states what does and does not form part of CPP.

### 3.5 **Ad clause 5 (Insertion of new clause—reclamation)**

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 proposed Act was being considered by the previous Portfolio Committee. It was inappropriately placed and the current provision in section 27(6) is inadequate. The Bill proposes an insertion of a new comprehensive clause in a more appropriate place in the Act. In addition, a definition for ‘reclamation’ is inserted under clause 1.

### 3.6 **Ad clause 6 (Amendment to clause 8—consequential amendment)**

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

### 3.7 **Ad clause 7 (Amendment of section 11—ownership of CPP )**

Section 65(2) of the Act deals with coastal leases and concessions. It currently provides that a right to exploit a natural resource from CPP may only be exercised in terms of national legislation. The section is more appropriately placed under the section dealing with ownership of CPP (section 11), as it qualifies or limits such ownership. In addition, during the public comment

phase it became evident that there is some confusion about the status of rights to use and exploit natural resources that occur on or in CPP. This amendment seeks to clarify the legal position.

### **3.8 Ad clause 8 (Amendment of section 13—access fees to CPP)**

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 a seal island or a beach volley ball event.

### **3.9 Ad clause 9 (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 or seaward.

### **3.10 Ad clause 10 (Amendment of section 15—erosion and accretion)**

This proposed amendment to section 15 of the Act is intended to align it with NEMA.

### **3.11 Ad clause 11 (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.

### **3.12 Ad clause 12 (Amendment of section 17—terminology)**

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

### **3.13 Ad clauses 13 and 14 (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 or, failing the MEC, the Minister to act if a municipality fails to.

### **3.14 Ad clauses 15 and 16 (Amendment of section 25—Coastal set-back lines)**

There was confusion between Environmental Impact Assessment (EIA) development set-back lines (in terms of the NEMA 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, and 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.

### **3.15 Ad clause 17 (Amendment of section 27—determining and adjusting the boundary of CPP)**

3.15.1 During the parliamentary process of passing the proposed Act, an attempt was made to address the issue of Transnet with CPP (see par. 3.4 above) by inserting a power to exclude areas from CPP with the ratification of Parliament. Such an ‘exclusion’ was effected prior to the commencement of the Act, whereby portions of ports under the control of Transnet were excluded from CPP, which resulted in unintended and undesirable consequences for both Transnet and the Department of Environmental Affairs (“the Department”). 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 privately owned. It is therefore necessary to delete the provision empowering the Minister to exclude CPP.

3.15.2 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 previous Portfolio Committee. It was inappropriately placed and the current provision in section 27(6) of the Act is inadequate. A new clause has been drafted and more appropriate placed through an insertion of section 7A.

### **3.16 Ad clauses 18 and 22 (Amendment of sections 31 and 42)**

The proposed amendments are consequential to the amendment to the definition of “local municipality”.

### **3.17 Ad clauses 19 and 21 (Amendment of sections 35-37 and section 39—National Coastal Committee)**

Section 35 of the Act provides for the establishment of a national intergovernmental body to give strategic direction on implementation of coastal management issues under the Act. To avoid duplication and streamline government processes, the Bill proposes that the existing intergovernmental forums in terms of the Intergovernmental Framework Relations Act, 2005



(Act No. 13 of 2005), MINMEC and MINTECH assume the role of the National Coastal Committee. This proposal is also in line with the Intergovernmental Framework Relations Act.

**3.18 Ad clauses 20, 23 and 24 (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.

**3.19 Ad clause 25 (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 17 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.

**3.20 Ad clause 26 (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.

**3.21 Ad clause 27 (Amendment of section 62—EIA report)**

Section 62(2) of the Act requires an organ of state to first consider an EIA 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 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 EIA process, so this terminology is inaccurate. It is therefore proposed to delete subsection (2).

**3.22 Ad clause 28 (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.

**3.23 Ad clause 29 (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.

### 3.24 Ad clauses 31 and 32 (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 CPP to a lease as not all activities have an impact and would therefore serve no real environmental value. As a result, it was not put into operation.

The Bill is proposing to replace the leases with coastal use permits, whereby the Minister is authorised to list activities which require authorisations, thereby removing the blanket restriction on activities that do not require regulation. 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 EIA Regulations. In addition, the time limitation of 20 years has caused concern among industries that require security of tenure for financial investments—e.g. aquaculture or sea-ranching within CPP. It is therefore proposed that the time period be removed and made discretionary, to allow for different scenarios.

### 3.25 Ad clauses 33, 37 and 41 (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.

### 3.26 Ad clause 34 (Amendment of section 69—consequential amendment)

The proposed amendment is consequential to the amendment to the definition of authorisation and the repeal of the National Coastal Committee (sections 35-37).

### 3.27 Ad clause 35 (Amendment to section 70)

The proposed amendment is consequential to the amendment of the definition of ‘coastal waters’. ‘Coastal waters’ currently covers the Republic’s territorial waters (12nm) but excludes the exclusive economic zone—200 nm (EEZ). 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 as well.

### 3.28 Ad clause 36 (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 by regulation 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 proposes to clarify the ambiguous time period for validity of a permit.

### 3.29 Ad clauses 38—40 (Amendment of section 79-81 offences and penalties)

There have been complaints that the sentencing is inadequate and that there are gaps in the sentencing provisions. Sections 79 to 81 of the Act (offences and penalties) have been tightened. 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 citizens and improves the text regarding the jurisdiction of courts in respect of offences in terms of the Act.

### 3.30 Ad clause 42 (Amendment of section 84—terminology)

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

### 3.31 Ad clause 43 (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.

### 3.32 Ad clause 44 (Amendment of section 89—delegations by the Minister)

Currently, the Minister is required to publish in the *Gazette* any delegation of power to a functionary outside the Department. This is an administrative procedure which is not strictly necessary and may hinder efficient service delivery. It is recommended for deletion.

### 3.33 Ad clause 45 (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.

### 3.34 Ad clause 46 (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.

### 3.35 Ad clause 47 (Amendment of section 92—urgent action by Minister)

Following requests during the public comment period, it was considered appropriate to give 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.

### 3.36 Ad clause 48 (Amendment to section 93—reporting)

With the proposed repeal of the National Coastal Committee, there is no requirement to report to the National Coastal Committee on the status of pipelines. It is recommended that the reporting requirement in section 69(11) be inserted in this section as part of the state of the coast report.

### 3.37 Ad clause 49 (Proposed insertion of new clause)

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 it in the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which has been approved by the courts.

**3.38 Ad clause 50 (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. 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 EIA 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 24 months.

**3.39 Ad clause 51 (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.

**3.40 Ad clause 52 (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.

**3.41 Ad clause 53 (Proposed insertion of new clause)**

Parliament excluded certain portions of the Transnet ports from CPP prior to the Act commencing. The exclusion had unintended and undesirable consequences for both Transnet and the Department. 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 privately 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 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 private ownership and is held in trust by the State. Allowing for exclusion subverts this principle.

**3.42 Ad clause 54 (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.