



DLA CLIFFE DEKKER  
HOFMEYR

# ENVIRONMENTAL ALERT

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## SWEEPING CHANGES IN THE REGULATION OF MARINE PROTECTED AREAS ARE EXPECTED TO IMPROVE PROTECTION FROM OIL SPILLS AND OTHER POLLUTION

Transportation of cargo by ocean-faring vessels is a risky business for the environment. This is enhanced by Cape Town and the Southern Cape coast being the heart of the world's main oil tanker shipping route.

The Kiani Satu and SMART cargo ships running aground during August 2013 along the South African coastline, as well as the MV Treasure bulk ore carrier sinking near Table Bay in 2000 which resulted in the oiling of more than 20 000 African penguins, illustrates the high risks of potentially devastating marine incidents.

To heighten the protection of the marine environment, the National Environmental Management: Protected Areas Bill 28 of 2013 (NEMPA Bill), Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Bill B19-2013 (Compensation Bill) and Merchant Shipping (Civil Liability Convention) Bill B20-2013 (CLC Bill) have been tabled in Parliament for discussion.

Collectively, these Bills advance the status of marine protected areas (MPAs) and address issues of liability and compensation for environmental damage caused by pollution from oil and other substances. The Compensation Bill and CLC Bill are welcome additions to the legislative framework, as they aim to provide victims of marine oil pollution with long-awaited access to international funds and improved compensation from ship owners which will assist in remediating environment damage.

### The Compensation Bill

This Bill forms part of a collection of measures which give effect to South Africa's obligations under the International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC Convention); International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 (Fund Convention) and International Maritime Organization Protocol of 1992 (IMO Protocol of 1992). These Conventions address issues of, and provide compensation for, victims of marine oil pollution.

The benefit to introducing the Compensation Bill is that South Africans will gain access to the well-resourced International Oil Pollution Compensation Fund (IOPC Fund). The IOPC Fund compensates victims of pollution damage when they are unable to obtain compensation, or compensation in full, under the CLC Convention.

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## The CLC Bill

Like the Compensation Bill, the CLC Bill gives effect to the CLC Convention, the Fund Convention and the IMO Protocol of 1992. By enacting the IMO Protocol of 1992, the South African Revenue Service (SARS) will be empowered to collect levies and pay them over to the IOPC Fund. This will relieve the taxpayer from being required to contribute to the costs of remediating marine oil pollution damage.

The CLC Bill achieves its purposes by:

- Requiring ship owners to maintain financial security for their ships, including compulsory insurance certificates which may be utilised if marine oil pollution is caused;
- Increasing ship owners' liability to R3.04 billion from the R210 million previously recoverable under the Fund Convention, as amended by the IMO Protocol of 1992; and
- Allowing the South African Maritime Safety Authority (SAMSA) to impose a maximum penalty and/or imprisonment of R500 000 and five years respectively on the master and/or ship owner for not obtaining or having on board compulsory insurance certificates or complying with SAMSA's directions. Importantly, SAMSA may detain ships if an amount owing to the Government under the Fund Convention remains unpaid.

The Compensation Bill and the CLC Bill are complemented by the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Bill (Contributions Bill) and Merchant Shipping (International Oil Pollution Compensation Fund) Administration Bill (Administration Bill). The Contributions Bill is a money Bill (as contemplated in the Constitution of the Republic of South Africa, 1996), empowering SARS to collect levies; whilst the Administration Bill concerns administrative matters pertaining to the money Bill.

By introducing this suite of Bills it is clear that the Government aims to prioritise the protection of our marine environment from the potentially disastrous consequences of incidents involving ships.

## The NEMPA Bill

This Bill introduces important changes to the legislative regime protecting South Africa's coastline.

Its primary purpose is to incorporate MPAs into the protected areas' regime under the National Environmental Management: Protected Areas Act, No 57 of 2003 (NEMPA). This is achieved by giving the Minister of Agriculture, Forestry and Fisheries (Minister) competency to declare certain areas as MPAs and to prescribe zones and activities within which permits are required before they are undertaken.

Importantly, the NEMPA Bill prohibits, *inter alia*, the following activities from occurring within MPAs without a permit:

- Fishing;
- Taking or destruction of any fauna or flora;
- Dredging or extracting of sand or gravel;
- Discharging or depositing waste;
- Disturbing, altering or destroying the natural environment or the water quality; or
- Carrying on any activity which may adversely affect an MPA's ecosystem.

MPAs regulated under NEMPA will receive a conservancy status similar to special nature reserves, national parks, protected environments, world heritage sites, specially-protected forest areas and certain mountain catchment areas. This amendment assigns increased importance to MPAs and therefore gives effect to the environmental management principles in the National Environmental Management Act, No 107 of 1998.

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