5 March 2025

TO: **The Chairperson of the Portfolio Committee on Transport, National Assembly**
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Our ref: BLC/Comments/Merchant Shipping

Dear Honourable Selamolela

RE: Written submissions in relation to the Merchant Shipping Bill [B12-2023]

1. We refer to the Merchant Shipping Bill [B12-2023] (**Bill**); the most recent discussion held by the Portfolio Committee on Transport (**Committee**) on 19 November 2024; our request for an extension of time for the submission of comments dated 5 December 2024; and our recent exchange of correspondence with Ms Carelse.
2. We are most grateful to your granting our request to submit both written and oral submissions after the initial deadline and have provided our written submissions below.
3. As indicated in our December letter, the Biodiversity Law Centre (**BLC**) is a non-profit organisation and law clinic, registered in 2021. Our vision is flourishing indigenous species and ecosystems that support sustainable livelihoods in Southern Africa while our mission is to use the law to protect, restore and preserve indigenous ecosystems and species in the region. We have a particular interest in the protection of marine biodiversity and ensuring that all social and economic development (including those in the maritime sector) are conducted in a manner which gives proper effect to everyone's right to an environment which does not harm health and wellbeing and everyone's right to have the environment protected for the benefit of present and future generations. Moreover, we have a particular interest in considerations of biodiversity mainstreaming across all sectors as envisaged by the White Paper on Sustainable Use and Conservation of Biodiversity.[1]
4. Due to our expertise in environmental and biodiversity law, constitutional and administrative matters, human rights and matter marine protections, our submissions have focused on these themes. In particular, our submissions focus on the

[1] Published under GN3537 in *GG* 48785 of 14 June 2023.

interrelationship between the Bill and environmental obligations under the international regime applicable to maritime transport, ocean conservation and climate change; the necessary interrelationship between the Bill and the domestic environmental framework; specific issues to the Bill's application to ship-to-ship bunkering and oil transfer (**STS Bunkering**); integration of requirements of ship construction and operation with measures to prevent pollution (including noise, light and heat pollution); and areas where better clarification of and integration with human rights instruments is recommended. We have also provided specific comments where we have identified areas where the Bill lacks clarity, where offences and/or penalties are unclear or potentially inappropriate and where we have identified other areas for improvement to ensure that the Bill complies with the requirements of legislative clarity and the rule of law.

General submissions

5. We welcome the updating and domestication of international maritime safety conventions:

5.1. Generally, we welcome the Department of Transport (**DoT**) updating and consolidating the Merchant Shipping Act, 57 of 1951; Marine Traffic Act, 2 of 1981; and Ship Registration Act, 58 of 1998. This is long overdue as is the express incorporation into South African law of the maritime safety conventions listed in section 452(1)[2] and the mechanism for ensuring that treaty amendments are updated. We also understand that the savings / transitional provisions of the Bill retain the Merchant Shipping (IGC Code) Regulations, 1998 (GNR132 of 23 January 1998); Merchant Shipping / Marine Pollution (IBC Code) Regulations 1998 (GNR133 of 23 January 1998); and Merchant Shipping (INF Code) Regulations, 2003 (GNR719 of 6 June 2003).

5.2. We would, however, appreciate clarification regarding:

5.2.1. why the Merchant Shipping (Safe Containers Convention) Act, 10 of 2011 appears not to have been included in the consolidation of maritime safety legislation;

5.2.2. what provision is to be made for domestication (and, if still required, ratification) of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (**Bunker Convention**); Protocol on Preparedness, Response and Co-operation to pollution incidents by hazardous and Noxious Substances, 2000 (**OPRC-HNS**); the International Convention for the Control and Management of Ships' Ballast Water and Sediments (**Ballast Convention**); International Convention on the control of harmful anti-fouling systems on ships, 2001 (**AFS**); and

5.2.3. whether the intention is to publish final amended IGC and IBC Code Regulations subsequent to the gazetting of draft amended regulations on 1 November 2024.

[2] Safety of Life at Sea Convention (**Safety Convention**); International Collision Regulations Convention; International Convention on Load Lines; Tonnage Convention; International Convention on Standards, Training, Certification and Watchkeeping of Seafarers Convention (**STCW**); International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (**STCW-F**); Maritime Labour Convention; and Work in Fishing Convention.

6. Despite focus on maritime safety, the Bill should not be treated in isolation from maritime anti-pollution measures.

6.1. While noting that the purpose of the Bill, expressed in its long title and Preamble, is primarily to address safety matters, it is artificial to entirely separate the matters addressed by the Bill (particularly "*with respect to navigation and shipping matters in general*"[3]) from the suite of legislation giving effect to South Africa's maritime anti-pollution obligations.

6.2. This is because it is in this Bill that matters of ship construction, ship navigation, workplace practices, general standards for shipping, licencing and registration, and general liability are addressed. These matters form the framework in which the specific requirements, duties and processes provided for by the various marine pollution, liability and compensation acts[4] as well as those anti-pollution conventions not yet fully domesticated[5] or not yet ratified.[6] In fact, the existing IBC Code Regulations demonstrate the importance of recognising the overlap between considerations and ensuring streamlining of these functions.

6.3. For this reason, we have provided areas where express reference to environmental controls should be referenced, insofar as may be helpful to clarify roles and duties and the scope of regulations in our specific comments below.

7. Need to ensure Bill is responsive to ocean conservation and climate change commitments under domestic and international law:

7.1. We note that the National Environmental Management: Integrated Coastal Management Act, 2 of 2008 (**NEM:ICMA**) is among the suite of legislation giving effect to international anti-pollution measures. Further, we note that certain provisions of the Bill give effect to the United Nations Convention on the Law of Sea (**UNCLOS**) which also has relevance for the regulation and rights of fishing activities (captured under South African law by the Marine Living Resources Act, 18 of 1998 (**MLRA**) together with the National Environmental Management Act, 107 of 1997 (**NEMA**) and a range of the "specific environmental management acts" as defined therein, including the National Environmental Management: Biodiversity Act, 10 of 2004 (**NEM:BA**), the Climate Change Act, 22 of 2024; and NEM:ICMA.

7.2. The inter-relationship between the obligations and duties in respect of environmental protection, integrated environmental management, ecologically sustainable use of marine living resources and the ocean environment, protections of marine biodiversity and maritime safety controls is a close one – particularly in respect of how ships are constructed and operated; how safe navigation is ensured; and how marine incidents,

[3] Bill, Preamble, fourth recital.
[4] Marine Pollution (Control and Civil Liability) Act, 6 of 1981; Marine Pollution (Prevention of Pollution from Ships) Act, 2 of 1986; Marine Pollution (Intervention) Act, 64 of 1987; Merchant Shipping (Civil Liability Convention) Act, 25 of 2013; Merchant Shipping (International Oil Pollution Compensation Fund) Act, 24 of 2013; Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, 35 of 2013; Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 36 of 2013; National Environmental Management: Integrated Coastal Management Act, 2 of 2008.
[5] International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990; The International Convention on the control of harmful anti-fouling systems on ships, 2001; the International Convention for the Control and Management of Ships' Ballast Water and Sediments.
[6] For example, the Protocol on Preparedness, Response and Co-operation to pollution incidents by Hazardous and Noxious Substances, 2000; and International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

casualties and other accidents are reported and responded to. In this regard, we have noted areas in the Bill where replication of the language found in the suite of domestic environmental statutes should be incorporated to ensure harmonisation and/or where contemplation of specific regulations should be incorporated to ensure alignment between shipping activities and South Africa's broader environmental framework, international environmental commitments and the environmental rights expressed in section 24 of the Constitution.

8. Safety matters implicate environmental rights

8.1. We draw the Portfolio's attention to the relationship between safety matters and the environmental rights expressed in section 24 of the Constitution:

8.1.1. Section 24(a) of the Constitution has been confirmed as expressing everyone's immediately realisable right to an environment which is not harmful to health and wellbeing.[7] This means that the legislature has a duty to respect, protect, promote and fulfil[8] the rights of all persons affected by maritime activity (including seafarers, those who interact with seafarers and those who experience the impacts of maritime activity) to have such activities conducted in a manner which does not harm health or wellbeing.

a) While wellbeing is not defined in the Constitution, its meaning has been accepted by the courts as a broad one to incorporate environmental health standards, the notion of a "healthy nation"[9] as well as mental health and state of mind. We have made specific submissions in this regard where appropriate.

8.1.2. Section 24(b) of the Constitution provides for everyone's right to have the environment protected for the benefit of present and future generations through legislation and other measures that meet three obligations. The first is to prevent pollution and ecological degradation. The second is to promote conservation. The third is to secure ecologically sustainable development and use of natural resources (while also promoting economic and social development that is justified).

a) This set of environmental rights and obligations means that legislation which address economic and social activity must ensure that ecologically sustainable development and use of natural resources is secured. As obligations which arise prior to such considerations, however, environmental harms must be prevented and the environment must be conserved – all with the overall outcome of long-lasting environmental protection for generations to come.

b) In addressing the manner in which maritime activity should be undertaken, how ships should be constructed, operated, navigated and so on, it is imperative that the legislature adhere to its obligations in terms

[7] *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* (39724/2019) [2022] ZAGPPHC 208 (18 March 2022).
[8] Constitution, section 7(2).
[9] See *African Climate Alliance and Others v Minister of Mineral Resources and Energy and Others* (56907/2021) [2024] ZAGPPHC 1271 (4 December 2024).

of section 24(b). It is also imperative that the Bill provides a framework in which the executive and administration (primarily in the form of the Minister, SAMSA and the officials, units and organs established by the Bill) are empowered to implement the Bill and measures it contemplates in order to respect, protect, promote and fulfil the environmental protection rights. Our specific comments and recommendations are made against this background.

9. Need to address the Relationship between the Bill, SOLAS and maritime-induced noise pollution

9.1. As indicated in our December correspondence, the BLC has followed the progress of, *inter alia,* the Marine Pollution (Prevention of Pollution of Ships) Amendment) Act, 36 of 2024 (**MARPOL Amendment Act**) and Marine Pollution (Preparedness, Response and Cooperation) Bill [B10-2022] (**OPRC Bill**) through the parliamentary process. Submissions have been made in respect of both instruments regarding the regulatory gaps in relation to the prevention of noise and light pollution.[10] During the course of debate regarding the MARPOL Amendment Act, the DoT indicated that the proper place for regulating noise was under the Safety of Life at Sea Convention (**SOLAS**), Code on noise levels onboard ships and Marine Environment Protection Committee Circular 833 on 7 April 2014.[11]

9.2. In this regard:

9.2.1. The IMO published Revised Guidelines for the Reduction of Underwater Radiated Noise from Shipping to Address Adverse Impacts on Marine Life on 22 August 2023 (MEPC.1/Cir.906) (**Noise Reduction Guidelines**).

9.2.2. The Noise Reduction Guidelines (enclosed with this submission) express the purpose of:

"*[providing] an overview of approaches applicable to designers, shipbuilders and ship operators to reduce the URN [Underwater radiated noise] of any given ship; and*

[assisting] relevant stakeholders in establishing mechanisms and programmes through which noise reduction efforts can be realized".[12]

9.2.3. As such, it is appropriate that provision is made in the domestic legislation which addresses ship construction and operation for express regulation of noise. We have incorporated recommendations in our specific comments regarding how this can be achieved (primarily through regulation), mindful that the Noise Reduction Guidelines are designed to be used as appropriate in a particular context but also of the imperative of South Africa demonstrating

[10] See public hearings held by the Portfolio Committee 8 November 2022 and submissions to the NCOP Select Committee on Public Infrastructure and Minister in the Presidency (**Select Committee**) held on 27 March 2024, available at < https://pmg.org.za/committee-meeting/38730/>, last accessed 5 December 2024.
[11] See responses presented at the Portfolio Committee meeting on 15 November 2022. We note that the 2014 circular has subsequently been replaced. See further the response to the NCOP Select Committee held on 27 March 2024 referenced above.
[12] Noise Reduction Guidelines, para 3.1.

progress as a pilot country participating in the GloNoise project (in respect of which the DoT is the focal government department).

10. <u>The need to provide for appropriate environmental and criminal enforcement.</u>

10.1. We recognize the close relationship between enforcement of the provisions of the Bill, enforcement of the marine pollution acts, environmental legislation and also, the specific expertise of members of the Environmental Management Inspectorate. We recommend that the Bill expressly acknowledges and provides for this relationship and facilitates effective environmental and criminal enforcement by:

10.1.1. adding a definition to section 1 of "Environmental Management Inspectorate" which reads "'***environmental management inspectorate*** *means any environmental management inspector or environmental mineral and petroleum inspector designated as such in terms of section 31B, section 31BA, section 31BB or section 31C of the National Environmental Management Act, 107 of 1998, and an "****environmental management inspector****" has the corresponding meaning".*

10.1.2. amending the sub-paragraphs of section 8(7) to include express reference to "environmental management inspectors" wherever these sub-sections list the relevant officials;

10.1.3. expressly incorporating powers for environmental management inspectors in Chapter 6, Part of the Bill by inserting a provision after section 279 (dealing with the powers of the South African Police) which reads:

"(1) *A member of the Environmental Management Inspectorate –*

(a) may investigate any marine incident or marine casualty or accident causing or threatening to cause an environmental hazard within the scope of that members' mandate, if that member has reason to believe that any environmental or pollution prevention or pollution control regulation has been breached or any environmental crime committed and that breach or crime constituted or was the cause of the marine incident, marine casualty or accident; and

(b) may exercise any power or duty afforded to a marine safety investigator in terms of this Act and afforded to that member in terms of the National Environmental Management Act, 107 of 1998."

(2) Notwithstanding section 274(2), an investigation conducted by a member of the Environmental Management Inspectorate may be for purposes of ascertaining administrative, civil or criminal liability".

10.1.4. flowing from this recommendation, amending section 283(5) to read:

"*If the South African Police Service, National Prosecuting Authority <u>or Environmental Management Inspectorate has</u> notified the marine accident and incident unit that an investigation or criminal proceedings <u>or for purposes of environmental enforcement</u> regarding the relevant event has been initiated, the marine accident and incident unit must ensure that the investigation<u>, criminal proceedings or for purposes of</u>*

environmental enforcement are not hindered because of the investigation conducted by it."

10.2. We submit that this approach will harmonise the Bill with Chapter 7, Part 2 of NEMA. Not only is harmonization of statutes a requirement of statutory interpretation,[13] but in this case, the importance lies in the powers and functions of environmental management inspectors. These include powers to stop, search and seizure powers specifically in respect of vessels[14] with warrantless seizure permitted where there is reasonable ground to believe that a vessel is "*being utilized in a manner that is likely to cause significant pollution, impact or degradation of the environment*"[15] as well as exercising other powers in relation to vessels.[16]

11. Need to harmonise principles of animal welfare and wellbeing with regulation of carriage of animals and livestock.

11.1. No provision is made for application of South Africa's laws concerning animal welfare and the wellbeing of animals (contemplated in NEM:BA) in the Bill. This is a critical omission in relation to the carriage of animals and livestock which, we submit, is required by the domestic context.

11.2. At a minimum, we recommend that this is addressed by provision made in Chapter 1 of the Bill cross referencing to the relevant welfare legislation and the importance of "*consideration of the well-being of animals in the management, conservation and sustainable use thereof*" expressed in section 2(a)(iiA) of NEM:BA.

11.3. We would also urge the DoT and the Committee to engage with their counterparts tasked with environmental affairs and animal welfare in the DFFE and Department of Agriculture (as well as the relevant parliamentary committees) to address the need for proper regulation of animal welfare and wellbeing when carried on board vessels. We invite the Committee and DoT to take forward such engagements with urgency, mindful of the recent incidents of animal abuse on vessels docking at South African ports.

12. Need to ensure provision for biosafety in relation to the transshipment of living modified organisms

12.1. We recommend that Chapter 5, Part 14 ("Cargoes in general") make provision for requirements pertaining to the intentional transboundary movement of living modified organisms as contemplated by Article 18 of the Cartagena Protocol on Biosafety.

12.2. While South Africa has largely domesticated this protocol to the Convention on Biological Diversity through the Genetically Modified Organisms Act, 15 of 1997 (**GMO Act**) neither this act, nor its regulations specifically cater for the manner in which GMOs must be handled and carried in the case of transboundary movement.

12.3. We submit that it is appropriate that the Bill caters for this specific aspect of biosafety in a manner which is consonant with the requirements under the GMO Act and that it

[13] See *Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society and Others* (CCT68/19) [2019] ZACC 47; 2020 (2) SA 325 (CC); (2020 (4) BCLR 495 (CC) (11 December 2019).
[14] NEMA, s 31J(1).
[15] NEMA, s 31J(2)(d).
[16] NEMA, s 31(4)-(5); 31K.

is appropriate to address this as a matter of maritime safety within the context of international maritime trade.

13. Need to ensure provision is made for biosecurity in relation to intended and unintended introduction of alien and invasive species

13.1. We note that an inherent risk of international shipping and carriage of goods is the intended and unintended introduction of alien and invasive species to South Africa (and biosecurity risks in relation to the High Seas).

13.2. We recommend that the DoT engage with the DFFE and Department of Agriculture to assess how the Bill can be aligned with, *inter alia*, the Alien and Invasive Species provisions of NEM:BA and the associated regulations as well as legislation administered by the Department of Agriculture, including the Phytosanitary Act, 35 of 2024.

14. Need to ensure international maritime obligations are properly domesticated in the context of South African administrative law.

14.1. Given that the Bill primarily domesticates international conventions relating to shipping and applies (a) to all South African ships; and (b) all ships in South African territorial waters, it is important that the manner of interpretation of the Bill is clearly stated with reference to the applicable domestic requirements of interpretation and administrative justice.

14.2. Section 2(7) provides for an important interpretive principle relevant to the international context in which the Bill operates.

14.3. We recommend adding clarification of the application of South Africa's administrative law to decisions and administrative processes set out in the Bill which has precedent in a number of statutes, including NEMA,[17] which we have used as a model for the suggested addition:

> "*Any administrative process conducted or decision taken in terms of this Act, must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), unless otherwise provided for in this Act".*

15. Need to ensure public participation is effective and coastal communities are properly integrated into process of issuing regulations.

15.1. Much of the detail of the Bill relies on proper and effective regulations. Section 447(1) of the Bill provides for a notice and comment procedure for any regulations promulgated by the Minister with a minimum period for comment of 30 days. In addition, section 447(5) provides for additional consultation by the Minister. We consider that given the subject-matter of the Bill, these general provisions are largely appropriate. However, we recommend two additions.

15.2. First, we would encourage the Committee and DoT to consider applying a period coinciding with the end-of-year / summer period (which is also the period when the construction industry closes) which do not count in relation to the counting of days for comment. There is precedent for doing so in other regulatory instruments, including the Uniform Rules of Court and the Environmental Impact Assessment Regulations,

[17] See also a slightly different formulation in section 6 of the MPRDA.

2014.[18] We submit that this is good practice promoting fair procedure in the context of South Africa's population dynamics and the practical process through which workers and rural populations (including fishers and coastal communities) access and engage with processes of developing regulation.

15.3. Second, we refer to our recommendation above that specific reference to the Promotion of Access to Justice Act, 3 of 2000 (**PAJA**) is incorporated into the Bill. Section 4 of PAJA provides for situations where broad-based consultation with the public at large is required and includes guidance which should be used to determine where section 447(5) of the Bill applies. In this regard, we would recommend that the DoT consider expressly referring to section 4 of PAJA in the context of section 447. We also encourage the DoT to consider adopting guidelines similar to the public participation guidelines issued under NEMA, which may guide the process of public participation where a notice-and-comment process may be insufficient due to the impact on coastal communities, workers, rural communities, vulnerable persons or groups where a 30-day notice-and-comment procedure would not be administratively fair.

16. Specific Submissions

Chapter 1: Definitions, Interpretation and Application of Act – Section 1: Definitions	
"cargo" and "coastal cargo"	**Submission** 1) We propose that the definition of "cargo" is amended to read: ***"cargo"*** *means any goods, wares, merchandise and articles of every kind whatsoever, including animals, birds, fish, plants, containers, prescribed cargo or prescribed oil, gas or chemical cargo carried, or intended to be carried, by sea or any object being towed by sea"* 2) We propose that a definition of "prescribed cargo" is inserted which reads: "***prescribed cargo****" means cargo designated in terms of* ***[insert relevant section of act].*** 3) It is not, however, clear that "prescribed cargo" in fact refers to a particular set of regulations or listings. Accordingly, and as an alternative route, we submit that "cargo" should be defined as *"any goods, wares, merchandise and articles and* substances *of every kind whatsoever, including animals, birds, fish, plants, containers and dangerous goods including oil, gas and chemicals carried or intended to be carried by sea or any object being towed by sea".* **Reasons** 4) The definition of "cargo" needs to clarify that it includes fuel and dangerous goods (as defined) Moreover, it needs to accord with the definition of "coastal cargo" and avoid circularity.

[18] Published under GNR982 in GG38282 of 4 December 2014. See Regulation 3(2) "*For any action contemplated in terms of these Regulations for which a timeframe is prescribed, the period of 15 December to 5 January must be excluded in the reckoning of days".*

	5) The definition of "coastal cargo" refers to "prescribed cargo" and "prescribed oil, gas or chemical cargo" which are undefined terms – and it is not clear which regulations will "prescribe" the cargo in question. 6) Expressly including "oil" will allow for this definition to also read with the definition of "oil" in the OPRC Bill.
"coastal ship permitted vessel"	**Submission and recommendation** 1) It is not clear what is meant by the reference to section 14. We recommend that this is clarified.
"coastwise traffic"	**Submission** 1) We welcome this definition and the specific provision made for dealing with coastwise traffic.
"commercial vessel"	**Submission and recommendation** 1) We note that it is necessary to understand the meaning "pleasure vessel" in order to understand this definition. However, "pleasure vessel" is not defined. Moreover, as currently defined, a commercial vessel includes a naval or defence vessel appears to be contrary to the scope and application of the Bill. 2) We recommend clarifying the definition which could be achieved by defining a "pleasure vessel" and also excluding defence / naval vessels.
"dangerous goods"	**Recommendation and reasons** 1) To ensure clarity and alignment with the international maritime regulatory regime, we recommend that this definition is amended to read "*substances, materials and articles covered by the International Dangerous Goods (IMDG) Code as amended from time to time or any substances, materials and articles not yet listed but which share similar properties"*.
"dependant"	**Submission and recommendation** 1) We note that the definition of "dependent" includes a hierarchy of dependency at odds with South Africa's legal regime pertaining to customary marriages and civil unions. It also appears to be incompatible with South Africa's legal recognition of customary marriage, life partnership arrangements, civil unions, and a wider range of relationships of dependency which extend beyond those listed in this definition (including in paragraph (e)). 2) We recommend that language is incorporated which (a) takes specific cognisance of the language of the Recognition of Customary Marriages Act, 120 of 1998 and Civil Union Act, 17 of 2006; and (b) provides scope for recognition of a residual category of relationships of dependency which are not expressly contemplated within the definition.

"marine casualty"	**Submission and recommendation** 1) We welcome the inclusion of (g) of this definition reflecting "*severe damage to the environment or the potential for severe damage to the environment, brought about by a ship or ships"* as reflective of the precautionary principle. 2) Given the specific impact on biodiversity and its components (as understood in NEM:BA), we recommend amending this definition to read: "*Severe damage to the environment including biodiversity and its components, or the potential for severe damage to the environment, including biodiversity and its components, brought about by a ship or ships".*
"marine incident"	**Recommendation** 1) For the reasons stated above, we recommend amendment of the definition to read "*an* event*, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operation of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment, including biodiversity and its components."*
"mobile offshore drilling units"	**Recommendation** 1) We recommend that the definition should be amended to read "*a vessel capable of engaging in drilling operations for the exploration, prospecting, production or mining of resources beneath the sea-bed such as liquid or gaseous hydrocarbons, sulphur or salt"* **Reasons** 2) While the language of "exploration or exploitation" aligns with that of Art 56(1) of UNCLOS, the South African legislative context makes it necessary to amend this language. The proposed amendments would align with that of the Mineral and Petroleum Resources Development Act, 28 of 2002 (**MPRDA**) and Upstream Petroleum Resources Development Act, 23 of 2024 (**UPRDA**).
"offshore installation"	**Submissions and reasons** 1) We note that the definition is not fully aligned with that of the OPRC Bill and that paragraphs (b), (c) and (e) of the definition should be aligned with the language of the MPRDA and UPRDA. In this regard, we submit that they should be amended to read: "*(b) any research, exploration, production, prospecting or mining platform used in research, exploration, production, prospecting or mining of any substance;* *(c) any research, exploration, production, prospecting or mining vessel used in research, exploration, production, prospecting or mining of any substance;*

	(e) any vessel or appliance used for the research, exploration, production, prospecting or mining of the seabed" 2) To ensure the definition unequivocally includes tankers and bunkering barges, we recommend that a new paragraph (g) is inserted which reads "*Any installation, mechanism or vessel which is used for transfer or storage of a substance involved in bunkering operations".* 3) We note the apparent origin of these provisions in Article 60(1)(b) of UNCLOS which reads "*In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of… installations and structures for the purposes provided for in article 56 and other economic purposes".* a) We draw attention to Art 56(1)(a) which provides for a State's sovereign rights (within the EEZ) "*for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds".* b) To align with the purposes and meaning of installations in UNCLOS, we propose inserting additional paragraphs (h) and (i) to read: "*(j) any installation, mechanism, vessel or appliance which is used for purposes of generating energy"*; and "*(i) any installation, mechanism, vessel or appliance which is used for purposes of conservation"*.
"person"	**Submission** 1) The definition, as it stands is confusing. A co-operative registered in South Africa is a legal person for example. To the extent that the personhood of trusts and co-operatives need to be specifically identified, we would, accordingly include clarification that the ordinary legal classifications of natural and juristic persons are expressly referenced. **Recommendation** 2) To avoid confusion we recommend that the definition reads "*includes both natural and juristic persons and shall include a trust and a co-operative"*.
"Shipping Acts"	**Submission and recommendation** 1) We draw attention to the OPRC Bill. Assuming that it will be passed and signed into law while the Bill is still in process, we recommend that this be included within the definition of Shipping Acts. In the alternative, we recommend that the definition is amended to read:

	"*the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981), the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986), the Marine Pollution (Intervention)Act, 1987 (Act No. 64 of 1987), this Act and any legislation promulgated to give effect to safety and pollution controls";* 2) This is material given the relevance of this definition to the grounds for refusing registration in terms of clause 25(1)(a)(i), the liability provision of section 47(1); and the role of the registered agent in respect of service of process in terms of section 49(5).
"severe damage to the environment"	**Submission** 1) The reason for the use of this phrase in the Bill (as opposed to "damage to the environment") is unclear. 2) Moreover, the definition itself is difficult to apply as it requires further interpretation of what is meant by a "*major deleterious effect upon the environment*". It is not clear whether this requires an "objective" or "subjective" determination – or how this should be made (or by whom). Moreover, it seems to establish an unnecessarily high bar. 3) Accordingly, we recommend that this definition is reconsidered in terms of how it is applied in the Bill and whether it is, in fact, appropriate.
Chapter 2: Administration	
Section 8(3)	**Recommendation** 1) We recommend amending this clause to read: "*When the Authority is of the opinion that the safety of any person at a workplace or in the course of his or her employment or in connection with the use of machinery is threatened on account of the refusal or failure of an employer or a user to take reasonable steps in the interest of the person's safety or to prevent harm to human health or the environment, the Authority may, by notice in the prescribed form, direct that employer or user to take such steps as are specified in the notice, within a specified period*". **Reasons** 2) The additional language is recommended with regard to the principle expressed in section 2(4)(j) of NEMA that "*The right of workers to refuse work that is harmful to health or the environment and to be informed of dangers must be respected and protected*". Granting powers to the Authority to intervene where an employer or user fails to prevent harm to health or the environment in the context of this provision of the Bill provides a mechanism for ensuring that SAMSA is empowered to uphold the right in the context of ship workers and also provides a mechanism for ensuring that employers and users uphold this right. This approach would thus further the integration and

	harmonisation of laws and approaches to workplace safety, health and environmental protection. This would also be consonant with upholding the environmental rights expressed in both section 24(a) and section 24(b) of the Constitution.
Chapter 3: Ship Registration, tonnage, licensing, permitting of vessels and notifications of intention to build vessels	
Section 19 "Powers and duties of Registrar"	**Recommendation** 1) We recommend addition of paragraph (d) to section 19(2) to clarify the Registrar's duties in respect of access to the Register as follows: "*(d) provide access to the Register as contemplated in section 41 of this Act".* **Reasons** 2) The additional text would provides for the functions and powers of the Registrar "*to provide access*" to the Register which is distinct from that of "*issuing copies*" provided for in section 19(2)(c). 3) This is necessary in order to give effect to the access to information provision contemplated in section 41.
Section 25 "Refusal of registration"	**Submission** 1) The definition of "offshore installation" includes certain vessels which may be subject to authorisation requirements in terms of the Environmental Impact Assessment Regulations and/or other environmental legislation. In this regard, we note the importance of integrating these requirements into the scheme for registration of ships. **Recommendations** 2) Accordingly, we recommend: a) the addition of clause 25(1)(e) which reads "*the applicant does possess all necessary permits and authorisations required in terms of the Environmental Legislation"*; and b) the addition of the definition of "Environmental Legislation" which reads "*means the National Environmental Management Act, 107 of 1998, and all Specific Environmental Acts as defined thereunder"*.
Section 41 "Access to Register"	**Submissions** 1) We welcome the provision that any person may have access to the Register (against payment of the prescribe fee). 2) We note that this provision does <u>not</u> envisage that the contents of the Register constitute "personal information" as defined by the Protection of Personal Information Act, 4 of 2013 or that its contents are trade secrets, financial, commercial, scientific or technical information – or otherwise subject to non-disclosure

	pursuant to the provisions of the Promotion of Access to Information Act, 2 of 2000. **Recommendation** 3) To the extent that there may, in the future, be any doubt as to the accessibility of the Register and its contents to any person created by the provisions of this legislation, we recommend that section 41 is amended to clarify the position.
Section 66(2) "Issue and period of validity of coastal shipping permit"	**Submission** 1) We note that vessels engaged in coastwise traffic may include tankers or bunker barges. In this regard, STS Bunkering licences have been issued for a maximum of 5 years – and this is reflected in the maximum duration of STS bunkering permissions granted by SAMSA in terms of the 2021 Codes. **Recommendation** 2) We recommend that that clause 66(2) should be amended to exclude tankers and bunker barges and an additional paragraph added to clause 66 which reads "*A coastal shipping permit issued under this Part to a tanker or bunker barge shall be valid for a maximum period of 5 years calculated from the date of issue unless such coastal shipping permit is cancelled in terms of section 67".*
Section 67(2) "Cancellation of coastal shipping permit"	**Submission and reasons** 1) To promote harmonisation with maritime pollution controls, we recommend that a new paragraph (d) is added which reads "*the measures, appliances or mechanisms for preventing and controlling pollution have not been maintained on such coastal ship permitted vessel in an effective condition".*
Section 69 "Measures to support South African ship ownership"	**Submission** 1) It is unclear why measures to support South African ship ownership should include the Minister for Mineral Resources and Energy but <u>not</u> ministers responsible for tourism, fisheries and the environment or the ministers responsible for traditional affairs. 2) We submit that this provision should be revisited with full regard to the scope of co-operative governance required in relation to promoting ecologically sustainable development and use of South Africa's marine environment and the need to fully justify economic development (as referenced above).
Section 70 "Certain vessels to be licenced"	**Submissions** 1) While section 70(1) requires the licencing of a "*small vessel which is not entitled to be registered as contemplated in section 23",* section 70(4) states the provisions of section 70 do not apply "*unless the vessel is entitled to be registered … in terms of section 23".* These provisions are directly contradictory. It is not clear what is intended by clause 70(4) and, accordingly, we are

	unable to make a recommendation regarding how these provisions may be clarified. 2) Similarly, the provisions of Part 4 appear to duplicate those of Part 3 insofar as section 70(4)(b) appears to require that a small vessel covered by Part "*is entitled to be issued a coastal shipping permit in terms of section 66(1)".* 3) Compounding these difficulties, the offences in terms of this Part are not specified in Chapter 8. This leads to uncertainty – and impermissible vagueness. 4) We urge the DoT to revisit these provisions and provide revised language which is clear, with easily discernible offences (and penalties) where appropriate.
Section 73 "Cancellation of licences"	**Recommendation** 1) To promote integration with anti-pollution and environmental regulation, we recommend inclusion of an additional paragraph in section 73(2) which reads "*the measures, appliances or mechanisms for preventing and controlling pollution have not been maintained on such vessel in an effective condition"*.
Section 98 "Prohibition of employment of children" read with section 369(2) "Offences in respect of cadets and employment of children and young persons" and section 376, Table 1 "Penalties in respect of offences regarding seafarers"	**Submission and reasons** 1) The penalty pertaining to offences pertaining to child labour is "*Fine or imprisonment for a period not exceeding three months"*. 2) This is far below the threshold in the Children's Act, 38 of 2005 (**Children's Act**) section 305(6) read with sections 141 and 305(1)(c) which stipulates that a person convicted of child labour offences is liable to a fine and/or imprisonment for a period not exceeding ten years. In addition, section 305(7) provides for persons convicted of such offences more than once being liable for a fine and/or imprisonment not exceeding 20 years. 3) We submit that alignment with the Children's Act is required.
Chapter 4, Part 11 "Provisions, Accommodation and Health"	**Submissions** 1) We note the absence of any provision of addressing the mental health or wellbeing of seafarers in this Division of Part 11 and in Chapter 4 as a whole. 2) In this regard, we draw attention to the immediately realisable right in section 24(a) of the Constitution which grants everyone the right to an environment that is not harmful to health and wellbeing and Article IV read with the applicable regulations of the International Maritime Labour Code. 3) While noting that provision is made for regulations in this Part, we caution that the absence of clear thresholds provided in the text of the legislation which address the health and wellbeing of seafarers may fall short of constitutional standards.

	Recommendations 4) At a minimum, we recommend that: a) this Part should expressly reference the wellbeing and mental health of seafarers; b) the Bill should provide for inspection of conditions to promote wellbeing and mental health; c) section 427(2) should provide for regulation of conditions to promote wellbeing; and d) section 430 should incorporate regulation regarding in respect of mental health care and treatment.
Section 239 "Safe navigation and avoidance of dangerous situations"	**Submissions** 1) We welcome the inclusion of the obligation to avoid environmental damage in section 239(2)(d). 2) It is not clear, however, whether failure to comply with the requirements of section 239(2) constitutes an offence. In this regard, the offence created in section 239(3) of failing "*to navigate carefully and at appropriate speed*" appears to be a separate consideration. Moreover, neither section 239(2), nor section 239(3) appears in section 379, Table 2. **Recommendations** 3) We recommend that this is remedied in order to prevent vagueness. In addition, we draw particular attention to the principle of prevention and obligation to prevent environmental degradation contained in section 24(b)(i) of the Constitution. This principle applies to prevention of all environmental harms, while the constitutional obligation applies both to the legislature in respect of the contents of the Bill and would, similarly, apply to private parties engaged in navigation.
Section 245(2)(c) "Application of Part 12"	**Submissions and recommendations** 1) One of the consequences of section 245(2)(c) appears to be that tankers and bunker barges would be excluded from the provisions of Part 12 addressing carriage of dangerous goods. This is because a tanker or bunker barge would likely fall within the category of "*a ship specially built or converted as a whole for [the purpose of carrying bunker as cargo]*". In turn, should SAMSA determine that tankers or bunker barges should be exempted from application of section 245(2)(c), this would undermine the provisions of section 247 which states "*The Authority must not, in any circumstances, grant a ship an exemption from the provision of this Part and the prescribed requirements*". 2) The contradictory nature of these provisions suggests that section 245(2)(c) should be entirely removed as it is difficult to contemplate any circumstances where SAMSA could determine that Part 12 of Chapter 5 does not apply to a ship, while also

	adhering to the obligation in section 247 not to provide any exemptions. 3) Moreover, section 245(2)(c) appears to entirely undermine the primary prohibition in section 246(1) that "*No person must send by or carry in any ship, except as prescribed, as cargo or ballast, any dangerous goods*".
Section 248 "Application of Part 13"	**Submissions** 1) We note that Part 13 of Chapter 5 applies only to "nuclear ships" defined as ships "*provided with a nuclear power plant"* in clause 248(2). 2) While we welcome the specific obligations in relation to "nuclear ships" (in particularly the specific obligations pertaining to environmental hazard in clause 250), we question whether the Bill should also include specific provision for the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships adopted by IMO Maritime Safety Committee Resolution MSC.88(71) (**IMF Code**). 3) The importance of the IMF Code suggests that its core provisions should be included in Chapter 5 itself, rather than being solely catered for through regulation as is the case under the regime currently in place. Further, we note that no specific provision for regulation relating to the provisions of the IMF Code is in fact provided for in the Bill – beyond the general provisions in clause 433 addressing regulation of carriage of dangerous goods generally. **Recommendation** 4) We recommend that this is remedied through express reference in the section pertaining to dangerous goods, alternatively through incorporation of a new section addressing carriage of nuclear fuel, plutonium and high-level radioactive wastes.
Section 250 "Environmental hazard"	**Recommendation** 1) We recommend amending this clause to read "*In the event of any marine casualty, marine incident or accident likely to lead to an environmental hazard…"* **Reasons** 2) There appears to be no reason to exclude marine incidents from the obligations placed on the master of a nuclear ship to immediately inform SAMSA and the competent authority in the country in whose waters the ship may be or may be approaching. In fact, it would seem to be necessary that the master does report marine incidents immediately. 3) Generally, we recommend that the Bill as a whole is scrutinised to ensure that reference to "marine incidents" is included in all applicable instances.

Section 256 "Safety management system"	**Recommendation** 1) We recommend that section 256(1) is amended to read "*The owner of a ship to which this Part applies must comply with the prescribed requirements regarding safety management and pollution prevention and must maintain a safety and pollution prevention management system in accordance therewith"*. **Reasons** 2) High-speed craft pose particular risks in relation to noise pollution as well as other marine pollution risks.
Section 265 "Additional requirements"	**Recommendation** 1) We recommend that the clause is amended to replace "*The Authority"* with "*The Minister"*. 2) We further recommend that the existing provision is supplemented by the following additional section: "*The Minister must prescribe requirements for South African ships that are bulk carriers in respect of prevention of environmental pollution and degradation, after consultation with the Minister responsible for environmental affairs"*. **Reasons** 3) The recommendation in paragraph 1 relates to what appears to be anomalous language or an error given the definition of "regulation" in section 1, the powers of the Minister to make regulations provided for in section 4(a), the powers of the Authority stipulated in section 5 and the duties of the Authority set out in sections 6 and 7. As a creature of Statute, it is particularly inappropriate for SAMSA to be granted the powers to issue delegated legislation in the form of regulations. 4) The recommendation in paragraph 2 is made with regard to the specific environmental risks posed by bulk carriers. Consultation is also included given the constitutional imperative of co-operative governance and the requirements under NEMA of integrated environmental management.
Section 269 "Report to Authority of marine casualty and other accidents to and on board ship"	**Submission and recommendations in relation to section 269(1)** 1) We further recommend that "*accidents leading to environmental hazards*" are included in this provision (as such hazards are not necessarily limited to accidents involving nuclear vessels as contemplated in section 250). Moreover, given the reference to "marine incidents" in section 269(1)(a), the heading should be aligned. For these reasons, we recommend the following amendments: a) The heading should be amended to read "*Report to Authority of marine casualty, marine incident and other accidents to and on board ship"*

	b) Section 269(1)(a) should be amended to read "*has been involved in a marine casualty, marine incident or accident causing or threatening to cause an environmental hazard;"* c) Section 269(1) needs to account also for reporting to the nearest Authority where a South African ship is not within South African waters. **Submission and recommendation regarding section 269(2)** 2) Clause 269(2) appears to deal with particularly serious incidents. In this context, the reference to an "accident" does not appear to make sense. 3) If the intention is to ensure that the nearest Authority is alerted in case of the involvement of particular persons (i.e. a stevedore, shore contractor or incidental person) in accidents, we would recommend aligning this text with that of clause 269(1) to read: "*Whenever a stevedore, a shore contractor or incidental persons are involved in a marine casualty, marine incident, accident causing or threatening to cause an environmental hazard, or accident resulting in serious injury to any person, their employer must, in the form and stating the particulars referred to in subsection (1), forthwith report the event to the nearest Authority by the fastest means of communication available".* **Submission and recommendation regarding section 269(6)** 4) Following the submissions and reasons above, section 269(6) should be amended to read "*No* person *must disturb or* remove *anything from the scene of a marine casualty, marine incident, accident causing or threatening to cause an environmental hazard, or an accident required to reported in terms of this section unless permitted by the Authority or the independent marine casualty unit in order to hold a preliminary enquiry or marine safety investigation into the marine casualty, marine incident or accident."*
Section 271 "Limitation of owner's liability"	**Recommendation** 1) We recommend amending section 271(9) to add paragraph (f) which reads "*for damage to the environment"*. **Reasons** 2) Section 271(9)(b)-(c) excludes oil pollution damage and nuclear damage from the provisions limiting owner's liability. However, damage to the environment is not limited to damage from these sources. The effect of failing to cater for damage to the environment more broadly, is that this provision is at odds with the "polluter pays" principle. 3) This principle is expressed in section 2(4)(p) of NEMA which reads "*The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution,*

	environmental damage or adverse health effects must be paid for by those responsible for harming the environment."
Chapter 6: Marine Casualty and Marine Incident Investigations	
Section 275 "Application of Chapter to certain ships"	**Recommendation** 1) We recommend that this clause is amended to include reference to "*a marine casualty or marine incident"* wherever it currently refers to "*marine casualty"*. **Reasons** 2) There appears to be no good reason why a preliminary enquiry or marine safety investigation should not apply also to marine incidents. Moreover, the investigation of marine incidents is expressly contemplated in section 276(a)(iii). **Further submission in relation to section 275(3)** 3) It is not clear why a preliminary enquiry and a marine safety investigation may not occur in respect of a ship if "*wholly engaged in plying between ports in the Republic*". Given the purpose of this part of the Bill in investigating and improving safety operations, it seems equally important to examine events applicable to vessels operating in South African waters. This is because the Bill applies to coastal activities in addition to international shipping. Accordingly, we submit that section 275(3) should be removed.
Section 279 "Powers of member of South African Police Service relating to marine casualties"	**Recommendation and reasons** 1) We recommend amendment of section 279(b) to read "…*may exercise any power or duty afforded to a marine safety investigator in terms of this Act and afforded to him or her in terms of the South African Police Service Act, the Criminal Procedure Act and the National Environmental Management Act."* 2) We refer in this regard to section 21O of NEMA which grants powers to members of SAPS in respect of environmental offences.
Section 313 "Rehearing of formal enquiry"	**Recommendation** 3) We recommend amending section 313(b) and (c) to read: "*The Minister may, after submission of the findings of the marine court of enquiry or maritime court contemplated in sections 294 and 312, order that the case be reheard if –* *(a) new and vital evidence which could not be produced during the formal enquiry or investigation has been discovered;* *(b) there is ground for reasonable belief that a miscarriage of justice has occurred; or* *(c) there are other compelling reasons which necessitate a rehearing."*

	Reasons 4) Section 313 paragraphs (b) and (c) include the phrase "*in the opinion of the Minister*". This appears to render this provision unnecessarily subjective – and inherently vague. 5) The proposed amendments seek to introduce thresholds which may be objectively assessed – particularly should the Minister's conduct be subject to administrative review. In this regard, we note that such decision should be treated as an administrative decision which is subject to review in terms of PAJA.
Chapter 7: Marine Traffic	
Section 323 "Suppression of illicit traffic in drugs on board foreign ships in territorial waters"	**Submission** 1) It is not clear why illicit traffic in drugs has been identified as a particular illicit trade to which the provisions of sections 319(1) and (2) should apply. While we support the inclusion of this clause, we recommend that provision is also made in respect of human trafficking, trafficking in specimens and species contrary to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**), and illicit trafficking in other goods. **Recommendation** 2) Accordingly we recommend amending section 323 to read: "*Suppression of illicit traffic in drugs, persons, specimens of species and goods on board foreign ships in territorial waters* *323. If the Authority on reasonable grounds suspects that:* *(a) the provisions of the Drugs and Durg Trafficking Act, 1992 (Act No. 140 of 1992), relating to dependence-producing drugs; or* *(b) the provisions of the Prevention and Combating of Trafficking in Persons Act, 2013 (7 of 2013), relating to trafficking in persons; or* *(c) the provisions of the United Nations Convention Against Transnational Organized Crime and its protocols; or* *(c) the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, relating to the trafficking of species of specimens are or have been contravened* *are or have been contravened by any person on board a ship in the territorial waters or in relation to any such drug, any victim of trafficking, or any specimen carried by or on board such ship, such ship and its cargo and such person may for the purpose of applying the said provisions be dealt with as provided in section 319(1) and (2), with the necessary changes as required by context."*

	Reasons for particular approach to recommended language 3) We note that the UN Convention against Transnational Organized Crime (**UNCTOC**) includes three protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (**Trafficking Protocol**), the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (**Smuggling Protocol**); and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organized Crime (**Arms Protocol**). 4) South Africa is a party to the UNCTOC as well its protocols. While there is overlap between the Trafficking Protocol and the Prevention and Combating of Trafficking in Persons Act, 7 of 2013 (the primary domesticating instrument in South Africa), reference to UNCTOC and its protocols makes it easier to identify the relevant practices for purposes of dealing with foreign vessels and clarifies the scope as including all crimes within its scope as well as those of the Smuggling and Arms Protocols.
Section 324(2) "Prohibitions in respect of offshore installations"	**Submission** 1) As currently drafted, the "purpose" to be determined if liability is to be avoided is unclear as sections 324(2)(b) and (d) read: "*(b) No liability arises in terms of subsection (1) where the master or person on board the ship in charge of the navigation thereof acted for purpose of… an offshore installation… and… such action was necessary for that purpose or was reasonable in the circumstances"* and "*(d) No liability arises in terms of subsection (1) where the master or person in on board the ship in charge of the navigation thereof acted for purpose of… any other ship or the cargo thereof or an offshore installation… and… such action was necessary for that purpose or was reasonable in the circumstances"* **Recommendation** 2) We recommend that sections 324(2)(b) and (d) are redrafted to clarify what is intended e.g. "*securing the safety of an offshore installation"* and "*preventing damage to any other ship or the cargo thereof or an offshore installation"* (if this is what is intended).
Section 329 "Establishment of aid to navigation"	**Submission and recommendation** 1) It is not clear what is meant by safe navigation "*on* offshore *installations", "on wrecks", "[on] sheltered waters"*. 2) It seems more appropriate to replace "on" with "of".

Chapter 8: Offences and Penalties	
Section 360 "General offences relating to registration and licensing of ships" and Section 361 "Penalties in respect of offences relating to building and registration of ships"	**Submissions and recommendations** 1) We question the omission of sections 36(5) and 58(2) from the provisions listed in section 360. The obligations under sections 36(5) and 58(2) appear to be of the same "kind" as those listed. Similarly, we question whether section 49(3) should be included among those offences listed in section 361(2). 2) Generally, the scheme provided for in sections 360 and 361 is confusing. This is because, the penalties for offences listed in section 360(1) are not detailed in either section 360(2) or section 361. The confusion is compounded by sections such as section 54(2) which provide that a particular non-compliance is an offence within the text of provision itself (without the need to cross-reference to Chapter 8). 3) We recommend that the Bill as a whole is reviewed to ensure consistency in respect of: (a) whether offences are described in the provisions addressing the particular obligation which must be met; (b) whether offences are to be collated and specified only in Chapter 8; and (c) clear specification of the penalties for each and every offence that can be identified in a consistent manner when reading the Bill. This is essential in terms of the fundamental principle of the rule of law and rights pertaining to criminal offences contained in section 35 of the Constitution.
Part 2 "Offences and Penalties in respect of Licensing of Vessels"	**Submissions and recommendations** 1) We recommend that this heading is replaced with language which matches that of Chapter 3, Part 3 which deals with "Permitting of Vessels". Doing so will promote clarity. 2) We note that section 364(3) appears over-broad in referring to a person who is guilty of an offence "*under this Act*". If the intention is to refer to only obligations relating to the permitting of Vessels, we recommend amending this to read "*A person who is guilty of an offence under Chapter 3, Part 3 of this Act*".
Section 386 "Bribery" read with Section 392(2) "Penalties in respect of offences regarding prohibitions in Part 6"	**Submissions** 1) The conduct described in clause 386 falls within the scope of section 4 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (**PRECCA**) which details "Offences in respect of corrupt activities relating to public officers" (and may, in certain instances, overlap with other offences under PRECCA). 2) It appears that the penalty for offences relating to bribery are a fine or imprisonment of up to three months. 3) This is at odds with section 26(1)(a) of PRECCA which provides that section 4 offences attract a fine or imprisonment of up to a life imprisonment (if sentence is imposed by a High Court), up to 18 years (if sentenced by a Regional Court), or up to five years (if sentenced by a magistrate's court).

	Recommendations 4) We recommend that the penalties for bribery in the Bill should be aligned with those applicable under PRECCA. 5) We further recommend that consideration should be given to the penalties applicable to Part 7 as a whole which appear to be insufficient given the seriousness of the offences in question. This is particularly the case in relation to offences of forgery/fraud (where the stipulated penalty is a fine and/or imprisonment of up to one year).
Chapter 9: Proceedings by Authority and Legal Proceedings	
Section 408 "Detention of foreign ship that has occasioned damage"	**Recommendation** 1) We recommend that the categories of injury and damage included in section 408(1) should be amended to add damage to the environment as follows: "*Whenever injury has in any part of the world been caused to property belonging to the Government of the Republic or the Government of any other treaty country or to a South African citizen or a citizen of any treaty country (other than the Republic) or to the environment by a foreign ship, and at any time that ship is found within the Republic or the territorial waters thereof….".* **Reasons** 2) This would strengthen the ability to detain / arrest and hold accountable persons responsible for environmental harms. 3) This, in turn, would enhance accountability, facilitate application of the polluter pays principle in respect of remediation of damage, and be consonant with the approach taken under domestic environmental legislation.
Chapter 10: Regulations	
Section 431 "General matters regarding safety of life at sea to be prescribed"	**Recommendations and reasons** 1) Due to the potential environmental harms caused by the mechanisms concerned, we recommend amendment to section 431(1)(zl) to read "conditions *governing the installation, working and use of any anchors, chains, cables, and loading and discharging gear and any other machinery on board or in connection with ships, and the strength and quality thereof, and the precautions to be taken to prevent harm to the environment or persons being injured thereby or by falling articles".* 2) For the reasons discussed above, we recommend the general consideration of regulation of class / quantity of goods and manner of carriage contemplated in section 431(1)(zj) is supplemented by addition of the following as consonant with the framework provided by NEM:BA and the animal welfare legislation: "*the manner in which animals may be carried in ships, including requirements to ensure their health, welfare and wellbeing".*

	3) To integrated considerations of noise, light and heat pollution controls, we recommend the addition to section 431(1) of the following: "*requirements and precautions pertaining to mitigation of noise, light and heat".* 4) For purposes of harmonising the legislative scheme, we further recommend that section 431(2) is amended to read "*In making regulations under this section, the Minister must have due to regard to the Safety Convention and any regulation or code issued thereunder and must have regard to regulations or codes in relation to the the International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol."*
Section 435 "Matters regarding management for safe operation of ships to be prescribed"	**Recommendation** 1) We recommend that a new sub-paragraph (e) is inserted which reads "*any other matter relating to prevention of pollution from ships not provided for in the Shipping Acts".* **Reasons** 2) The introductory paragraph of this clause refers to "*the safe operation of ships and pollution prevention".* We regard it as important and appropriate that the Minister may prescribe matters in relation to both sets of issues. However, we note that the four sub-paragraphs focus only on safety. 3) We note that the Minister is granted powers to issue regulations in terms of section 28(1) of the Marine Pollution (Control and Civil Liability) Act, 6 of 1981; section 3 of the Marine Pollution (Prevention of Pollution from Ships) Act, 2 of 1986; section 3 of the Marine Pollution (Intervention) Act, 64 of 1987; and clause 41 of the Marine Pollution (Preparedness, Response and Cooperation) Bill [B10B-2022]. However, the scope of such powers in respect of each of these statutes is limited and it is appropriate that the Minister has powers to prescribe measures to prevent pollution that are of a general nature and which relate to the specific matters which are addressed primarily in the context of safe operation of ships within South Africa's legislative scheme.
Section 436 "Matters relating to high-speed craft to be prescribed"	**Recommendations** 1) We recommend amending the clause to read: "*The Minister may prescribe matters regarding the safety and pollution prevention measures for high-speed craft as provided for in this Act and any amendments relating to safety and pollution prevention measures of high-speed craft made to any of the listed conventions, including –* *(a) the certification of high-speed craft;* *(b) the surveys conducted for purposes of certification of high-speed craft;*

	(c) the noise mitigation measures required in relation to high-speed craft; and *(d) any other matter relating to the safety and pollution prevention measures for high-speed craft.* **Reasons** 2) These amendments are recommended to harmonise the Bill with the marine anti-pollution legislation and environmental scheme more generally. They are also recommended to provide for specific indications as to where noise and pollution controls may be regulated in the context of the construction and/or operation of specific classes of vessels. 3) In the context of high-speed craft, the need for express consideration of noise regulation is heightened given the relationship between speed and consequently higher levels of noise pollution which may result.
Section 438 "Additional safety measures for bulk carriers to be prescribed"	**Recommendations and reasons** 1) For the reasons canvassed above, we recommend that this clause be amended to include pollution prevention measures as follows: a) The heading to be amended to read "*Additional safety and pollution prevention and control measures for bulk carriers to be prescribed"*. b) The opening paragraph of the clause to be amended to read "*The Minister may prescribe additional safety and pollution prevention and control measures for bulk carriers as provided for in the Act, and amendments relating to safety and pollution prevention and control measures for bulk carriers made to any of the listed conventions including – "* c) The addition of the following subclauses: "*(l) noise, light and heat monitoring requirements;* *(m) structural and other requirements for bulk carriers to prevent and control noise, light and heat pollution;* *(n) structural requirements for bulk carriers to prevent and control emissions".*
Section 439 "Matters regarding vessels less than three metres in length to be prescribed"	**Recommendation** 1) We recommend adding the following sub-paragraph: "*(c) the pollution prevention and control measures subject to* which any such vessel may so be used." **Reasons** 2) While sub-paragraph (b) is capable of including pollution prevention and control measures within the scope of "conditions", specific reference to such measures and the powers of the Minister to regulate in this regard enhances clarity

	and resolves any doubt as to the scope of the Minister's powers in relation to environmental protections. 3) This is particularly important given the potential for gaps to arise through assumptions that pollution prevention is regulated under the marine pollution acts (which do not cover the entire range of potential pollutants) or through measures taken by the Minister responsible for environmental affairs.
Section 442(1) "Matters regarding marine traffic to be prescribed"	**Recommendation and reasons** 1) For reasons relating to clarity in respect of noise regulation canvassed above, we recommend inserting an additional paragraph (f) to read "*regulating the speed of vessels for purposes of protecting the public interest and the environment*".
Section 452(4) "International conventions to have force of law"	**Recommendation** 1) We recommend amendment to this section to read as follows: "*The Minister must ensure that a copy of the complete text of each international convention referred to in subsection (1), as revised or amended <u>together with any codes, guidelines or similar relevant to such convention</u>, is kept at such places as he or she may determine, and in particular, is published on the official website of the Department of Transport, <u>official website of the Authority and official website of the National Ports Authority</u>, and he or she may direct the Authority to keep such copies at such places as it considers necessary and such copies must be <u>freely</u> available for public inspection.*" **Reasons** 2) It is critically important that all international conventions and codes are readily available to the public. This should, at a minimum, be on the websites for the DoT, SAMSA and Transet National Ports Authority (**TNPA**) as well as at all Departmental offices, offices of SAMSA and offices of the TNPA. In this regard, we note that, in some cases, consolidated and updated versions of the treaties and codes administered by the IMO are <u>not</u> readily available on the IMO website (or similar international treaty database).
Schedule 3	
Schedule 3, Amendment of section 14(1) of the Customs and Excise Act, 91 of 1964	**Submissions** 1) It is unclear why "*the transportation <u>or transfer</u>*" of bunker or oil cargo from a ship or tanker to "*<u>any</u> other ship or tanker*" should be deemed to be coastal ship permitted traffic. 2) As we understand the provisions of Chapter 3, Part 3, these have the effect that no offshore STS Bunkering may be undertaken in South Africa's territorial waters <u>unless</u> the vessels used by the bunkering operator have a coastal shipping permit. This requirement is, in our view, important in terms of providing a necessary degree of scrutiny in respect of the vessels used in

	these operations. The language of the deeming provision, however, suggests that through the Customs and Excise Act (not the Merchant Shipping legislation), bunker barges and tankers engaged in STS Bunkering operations would be regarded as having been granted a permit even where this had not occurred. 3) Moreover, the purpose of the deeming provision is unclear given the manner in which SARS has eventually sought to resolve the legislative gap pertaining to matters of customs and excise (and loss of revenues to the fiscus) through amendments to the rules under section 21(1) and 60 of the Customs and Excise dated 22 November 2024. **Recommendation** 4) While the proposed legislative amendment would likely require amendment to these rules, it seems that it would be more prudent to consider, in consultation with SARS, with the proposed amendment is in fact necessary and/or whether the unintended consequence of this amendment can be avoided.

17. We look forward to constructive engagement with the Committee around these issues and the opportunity to make oral submissions on 11 March 2025.

Yours faithfully,

BIODIVERSITY LAW CENTRE NPC

***Per* Nina Braude**