

# PROTECTED AREAS AMENDMENT BILL [B28- 2013]

Centre for Environmental Rights' Submission to the  
Portfolio Committee on Water and Environmental  
Affairs



Centre *for* Environmental Rights  
Advancing Environmental Rights in South Africa

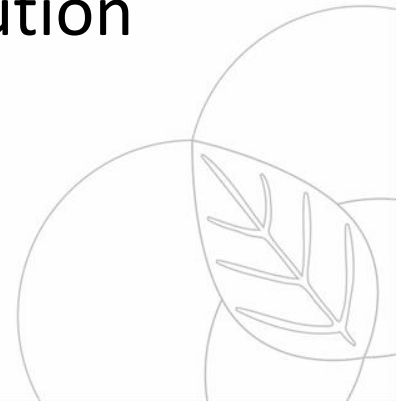
# INCORPORATION OF MPAs INTO NEMPAA

- The Bill proposes to incorporate marine protected areas (MPAs) into the National Environmental Management: Protected Areas Act, 2003 (NEMPAA)
- This proposal is welcomed:
  - Addresses legislative fragmentation
  - Addresses institutional fragmentation
  - Solidifies protected areas status of MPAs
  - Management of MPAs will be better regulated



# Exploration and Production Operations

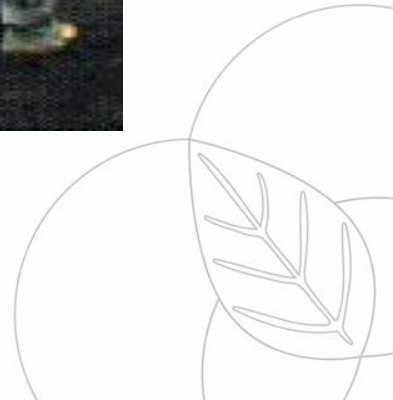
- Exploration operations often require “seismic surveying” which produces the largest man-made sound in the ocean
- Seismic surveying kills relatively immobile marine biodiversity, causes behavioural change in some species and decreases catch
- Petroleum production operations have a big impact on marine ecosystems – it is associated with petroleum waste dumping, production pollution and spills
- Examples: Niger Delta and Gulf of Mexico



# Niger Delta



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# Niger Delta



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# Gulf of Mexico: Deep Horizon spill



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# Gulf of Mexico: Deep Horizon spill



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# Why the concern?

- 11 exploration permits have been approved in respect of the South African coast
- One of which was approved in very close proximity to the De Hoop Marine Protected Area
- 8 applications for exploration operation rights are currently being processed by the Department of Mineral Resources
- 40 technical cooperation permits (forerunners to exploration operation rights) have been granted in respect of the South African coast





# Section 48 of NEMPAA

Section 48 of NEMPAA provides as follows:

“**48(1)** Despite other legislation, no person may conduct commercial prospecting and mining activities –

(a) in a special nature reserve or nature reserve

(b) in a protected environment, without the written permission of the Minister and the cabinet member responsible for minerals and energy affairs

(c) in a protected area referred to in section 9(b), (c) and (d);...”



# Section 1 of the Mineral and Petroleum Resources Development Act, 2002

- “**mine**” means, when – ...
  - (b) used as a verb, in the mining of any mineral in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto in, on, or under the relevant mining area”
- “**prospecting**” means intentionally searching for any mineral by means of any method – ...”
- “**mineral**” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes—
  - (a) water, other than water taken from land or sea for the extraction of any mineral from such water;
  - (b) petroleum; or
  - (c) peat”



# Section 1 of the Mineral and Petroleum Resources Development Act, 2002 continued

- **“exploration operation”** means the re-processing of existing seismic data, acquisition and processing of new seismic data or any other related activity to define a trap to be tested by drilling, logging and testing, including extended well testing, of a well with the intention of locating a discovery;
- **“production operation”** means any operation, activity or matter that relates to the exploration, appraisal, development and production of petroleum;

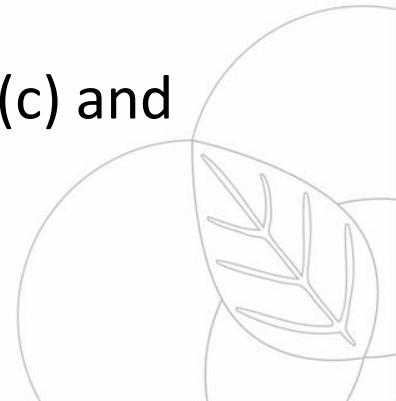


# We propose an amendment of section 48

We propose that section 48 of NEMPAA provides as follows:

“**48(1)** Despite other legislation, no person may conduct **commercial prospecting, and mining, exploration and production, and related activities** –

- (a) in a special nature reserve or nature reserve
- (b) in a protected environment, without the written permission of the Minister and the cabinet member responsible for minerals and energy affairs
- (c) in a protected area referred to in section 9(b), (c) and (d);...



# Clause 12: Proposed section 48A

- The proposed section 48A(1) of NEMPAA is a list of restricted activities in MPAs
- The proposed section 48A(2) provides for Ministerial discretion to permit these activities
- “(c) dredge or extract sand or gravel”
- Section 1 of MPRDA: “mine” means “... mining of any mineral in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto in, on, or under the relevant mining area”
- Section 1 of MPRDA: “mineral” “... includes sand, stone, rock, gravel, clay, soil...”



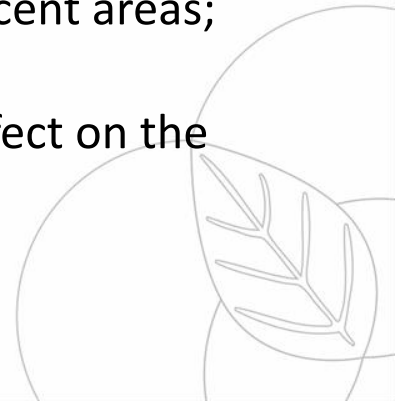
# Clause 12: Proposed section 48A

- We are concerned about the wide discretion afforded to the Minister in terms of the proposed section 48A(2) “notwithstanding subsection (1)”
- If section 48 of NEMPAA is not amended as recommended above, we propose that:
  - the section 48A(1) list of restricted activities is split into “restricted” and “prohibited” activities:
  - “exploration operations” and “production operations” included in the list of prohibited activities



# Conclusion

- The purposes of declaring MPAs:
- Clause 5 of the Bill (proposed section 22A of NEMPAA):
  - (a) to protect marine and coastal ecosystems;
  - (b) to protect marine and coastal biodiversity;
  - (c) to protect a particular marine and coastal species, or specific population and its habitat;
  - (d) if the areas contains scenic areas or to protect cultural heritage;
  - (e) to facilitate marine and coastal species management by protecting migratory routes, breeding, nursery and feeding areas, thus allowing species recovery and to enhancing species abundance in adjacent areas;  
or
  - (f) to restrict or prohibit activities which may have an adverse effect on the environment



# THANK YOU

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