63 Hout Street, Mercantile Building

Cape Town, 8000, South Africa.

TEL: +27 21 426 1633

ATT: Allan Basajjasubi

EMAIL: jacqueline@naturaljustice.org and allan@naturaljustice.org

TO: The Director-general: Department of Forestry, Fisheries and the Environment (DFFE)

ATTN: Dr D Fischer

Private Bag X447 Pretoria 0001

BY EMAIL dfischer@dffe.gov.za

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COMMENTS ON THE PROPOSED AMENDMENTS TO THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS LISTING NOTICES, 2014

INTRODUCTION

1. Natural Justice: Lawyers for Communities and the Environment is a non-profit organization, registered in South Africa in 2007. Our vision is the conservation and sustainable use of biodiversity through the self-determination of indigenous peoples and local communities.
2. Our mission is to facilitate the full and effective participation of Indigenous peoples and local communities in the development and implementation of laws and policies that relate to the conservation and customary uses of biodiversity and the protection of associated cultural heritage.
3. Natural Justice works at the local, national, regional, and international levels with a wide range of partners. We strive to ensure that community rights and responsibilities are represented and respected on a broader scale and that gains made in international fora are fully upheld at lower levels.
4. Natural Justice wishes to submit its comments to the Department of Forestry, Fisheries and the Environment. We further express our request to make a verbal submission or participate in any meaningful engagements with the Department when an opportunity arises.

5. We submit to the Department of Forestry, Fisheries and the Environment, the following comments pertaining to the gazette ***Amendments to the Environmental Impact Assessment regulations, 2014, and the Environmental Impact Assessment Regulations Listing Notices, 2014.*** The regulations were published on the 6th of December 2024.

6. Natural Justice is deeply concerned that the promulgation of these regulations indicates that the government of South Africa intends to pursue plans to continue oil and gas exploration in South Africa. The Natural Justice commentary should not be construed as endorsement or support of the plan by the Minister. These comments are Natural Justice's contribution to ensure that appropriate and effective legislation is passed to protect the environment and the communities we serve.

7. We further express our request to make a verbal submission or participate in any meaningful engagements with the Department or the Portfolio Committee when an opportunity arises.

8. The Commentary is set out as follows: - general comments, specific comments, and the conclusion.

GENERAL COMMENTS

Human Rights Based Obligations and Climate Change Mitigation Strategies

9. In terms of Human Rights based obligations imposed by the Constitution[1], National Environmental Management Act (NEMA), Integrated Coastal Management Act[2] (ICMA) and Climate Change Mitigation (Paris Agreement and the Climate Change Act) climate change mitigation strategies require strong procedural safeguards, including impact assessments that account for cumulative climate effects. However, the amendments seek to downgrade seismic surveys to a "basic assessment', bypassing the more rigorous scoping and full impact assessment that are necessary to ensure alignment with South Africa's climate commitments. The proposed downgrading of environmental assessments for seismic surveys risks serious harm to marine biodiversity and food security, disproportionately affecting communities that depend on ocean ecosystems.

10. The amendments fail to integrate climate change considerations into environmental decision making, contradicting the Climate Change Act, and the Paris Agreement. This is apparent in how the amendments attempt to downgrade seismic surveys to a basic assessment process which ignores their contribution to fossil fuel extraction and climate change, undermining national decarbonization efforts earmarked in the Climate Change Act,2024. The concern that Natural Justice has is that these amendments may likely facilitate the support for the expansion of fossil fuel exploration at a time when global commitments require a phasing down of oil and gas.

11. Some of the proposed changes to the regulations and listing notices holistically appear to attempt to side step recent court rulings that emphasized the need for rigorous environmental assessments and participatory governance (e.g Sustaining the Wild Coast

[1] Section 24 of the Constitution of the Republic of South Africa
[2] NEM: ICMA, section 12.

NPC, V Minister of Mineral Resources and Energy). This could have the potential to obscure not only environmental rule of law but also legal certainty developed by the High Court and Supreme Court of Appeal in their interpretation of obligations placed on the state in terms of the Constitution, NEMA and the ICMA.

Weakening of Public Participation and Consultation

12. Holistically read together, the proposed amendments attempt to weaken international legal principle of free, prior, and informed consent protections (FPIC), particularly for indigenous communities and small-scale fishers who rely on onshore natural resources and communal land and offshore coastal natural resources. Judicial precedents, including Baleni[3] and Maledu[4] cases, affirm that FPIC is legally required before extractive activities can take place on customary land. These proposed amendments appear to ignore these rulings.

13. Regulation 39(2)(d) amendment, for example, attempt to exclude certain activities, including mining expansions and projects using fracturing technology, from the requirement to obtain landowner consent. This contradicts constitutional protections and the Interim Protection of Informal Land Rights Act (IPILRA), which mandates that no person may be deprived of informal land rights without their consent.

14. The removal of the consent requirement for projects on coastal public property particularly harms small-scale fishers and coastal communities who depend on marine resources for their livelihoods. This could have the likely result of contradicting NEM:ICMA which requires that coastal resources must be managed in the public interest, thereby necessitating the protection of adequate consultation and consent.[5] This is apparent for example in the proposed amendments outlined in paragraph 28(m), read with paragraph 29(h) amending Listing Notices 1 and 2. The likely outcome is that seismic surveys, which have no conclusive scientific evidence to refute with certainty the significant environmental and social impacts the have on marine biodiversity and fisheries, are downgraded from requiring full scoping and environmental impacts (EIA) to a basic assessment, thus limiting public participation requirements.

Balancing of Economic Development with Environmental Protection

15. The amendments holistically attempt to prioritize economic interests (eg. Mining, offshore oil and gas) over environmental and social considerations, potentially undermining the precautionary principle affirmed in *Adams*[6] and *Sustaining the Wild Coast*[7]and sustainable

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[3] *Baleni and others v Minister of Mineral Resources and others* [2019] 1 All SA 358 (GP), at para 61.

[4] *Maledu and others v ltereleng Bakgat/a Mineral Resources (Pty) Limited and another* [2018] ZACC 41 [reported at 2019 (1) BCLR 53 (CC)], cited in Baleni at para 77.

[5] **Section 11 of NEMICMA** makes the State the **public trustee of coastal property**, requiring **public interest safeguards**. The proposed amendments weaken these protections.

[6] Christian John Adams & Others v Minister Mineral Resources and Energy & Others (West Coast Seismic Survey) Part A (March 2022), at paras 26 – 33.

[7] *Sustaining the Wild Coast NPC and others v Minister of Mineral Resources and Energy and others* [2022] 4 All SA 533 (ECG), para 108-109.

development goals. This may occur through the amendments facilitating the strengthening of extractive industries operational activities without robust assessments, thus potentially exposing South Africa to environmental liabilities including the loss of biodiversity, land degradation and increased greenhouse gas emissions brought about through catastrophic oil spills, methane and carbon dioxide leaks in exploration and production activities, as well as warming temperatures causing ocean acidification and warming.

16. Furthermore, the precautionary principle as enshrined in NEMA, requires that where there is scientific uncertainty regarding environmental harm, a cautious approach must be taken. As stated above already, courts have emphasized that seismic surveys and other high-risk activities should be subject to strict environmental scrutiny, as the courts have recognized that the precautionary principle requires full assessments before allowing activities with potential irreversible harm from occurring. The proposed amendments go against this principle by reducing impact assessment requirements.

Potential for weaking of international standards for Environmental Impact Assessments

17. The proposed amendments which attempt to prescribe a downgrading of offshore seismic surveys from full scoping and impact assessment to a basic assessment, fail to meet internation best practices for EIAs. This is evident through the categorization of the activities within the listing notices which on the face of it appear to contradict the African Charter on Human Rights and Peoples's rights and the Paris Agreement to which South Africa is a signatory to, which both call for example the integration of climate considerations into decision making processes as now expressly mandated under the Climate Change Act.

Specific Comments

Section	Draft Text	Comment and proposed change
Amendment of regulation 9 of the Regulations	Regulation 9 of the Regulations is hereby substituted for the following regulation: “The format of any application form must be determined by the competent authority and must include the national sector classification of the activity applied for”	The draft text allows the competent authority to determine the format of the application form without specifying clear criteria or guidelines. This could lead to inconsistency, unpredictability and potential administrative inefficiencies. However, allowing the competent authority to determine the application format ensures adaptability to different sectoral needs and emerging climate change considerations. This aligns with the Climate Change Act's (2024) call for integrated climate governance, and sector based classification which is necessary for monitoring and compliance with national emission

		targets. **<u>Natural Justice proposes the following amendments to the draft text:</u>** *"The format of any application form must be **determined by the competent authority**, subject to the following requirements:* a. The format shall be **developed in accordance *with publicly available guidelines***, *ensuring transparency and legal certainty.* *b. The format shall **include the national sector classification** of the activity applied for, consistent with **sectoral emissions targets and adaptation requirements** as prescribed under the Climate Change Act, 2024.* *c. The application form shall require applicants to disclose:* *i. The **climate impact assessment** of the proposed activity, where applicable, including mitigation and adaptation measures.* *ii. Measures to ensure **alignment with just transition principles**, including potential socio-economic impacts and opportunities for affected communities.*
Amendment of regulation 19 of the Regulations	a basic assessment report, inclusive of any specialist reports, an EMPr, the report generated by the screening tool, a closure plan in the case of a closure activity and where the application is a mining application, the plans, report and calculations contemplated in the Financial Provisioning Regulations, which have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority	The inclusion of all relevant reports in the draft text and a mandatory public participation process aligns with the Climate Change Act's principles of transparency, accountability, and resilience. However, the **30-day participation period should be expanded for complex projects** that significantly impact climate resilience (e.g., fossil fuel extraction, coastal infrastructure development) **<u>Natural Justice proposes the following amendments to the draft text:</u>** ***Regulation 19(1)a): Submission of a Basic Assessment Report*** 1. ***Required Documentation*** *Any application submitted under these regulations must include:* *a. A **Basic Assessment Report,***

		inclusive of any required ***specialist reports*** *relevant to the proposed activity's potential environmental and climate impact.* *b. An* ***Environmental Management Programme (EMPr)*** *detailing mitigation and adaptation measures in line with the* ***Climate Change Act, 2024****. The EMPr must align with applicable* ***Sectoral Emissions Targets and Adaptation Strategies*** *issued under the Climate Change Act* *c. A* ***report generated by the screening tool*** *to assess sectoral emissions and climate resilience risks.* *d. A* ***Closure Plan****, in the case of a closure activity.* *e.* ***For mining applications****, the required* ***plans, reports, and financial provisioning calculations*** *in compliance with the* ***Financial Provisioning Regulations****, provided that they have undergone public consultation.*
Amendment of regulation 26(g)	the frequency of updating the approved EMPr, and the closure plan in the case of a closure activity, and the manner in which the updated EMPr and closure plan will be approved, taking into account processes for such amendments prescribed in terms of these Regulations: and"; and	Given the accelerating impacts of climate change, frequent updates to EMPrs and Closure Plans ensure that environmental and socio-economic risks are continuously reassessed and mitigated. This would coincide/align with sections 3(i)-(k) of the Climate Change Act Natural Justice proposes the following amendments to the draft text: **"The frequency of updating the approved EMPr, and the closure plan in the case of a closure activity, and the manner in which the updated EMPr and closure plan will be approved, shall be determined based on a risk-based assessment by the competent authority, taking into account processes for such amendments prescribed in**

		terms of these Regulations, and shall include the following: ***(a)*** *The approved* ***EMPr and closure plan*** *shall be reviewed and updated:* *(i)* ***At least once every five years*** *for standard activities, unless otherwise determined by the competent authority;* *(ii)* ***At least once every three years*** *for activities classified as high risk, including those with significant greenhouse gas emissions, high water consumption, or located in* ***climate-sensitive or ecologically vulnerable areas****;* *(iii)* ***Immediately following any significant environmental, climatic, or regulatory change*** *that materially affects the project's impact, financial provisioning requirements, or mitigation measures.* ***(b)*** *Any update to the EMPr and closure plan must:* *(i) Be* ***submitted to the competent authority*** *for review, ensuring consistency with the latest scientific knowledge, sectoral adaptation and emissions targets under the* ***Climate Change Act, 2024****;* *(ii) Include* ***evidence-based justifications for proposed changes****, particularly where adjustments affect climate resilience or emissions reduction commitments;* *(iii)* ***Undergo a public participation process*** *where the updates may have a* ***material impact on affected communities, ecosystems, or water resources****, with stakeholder comments incorporated into the final submission*
Amendment to Regulation 37(2)	The holder of the environmental authorisation must invite comments on the proposed amendments to the impact management outcomes of the EMPr or amendments to the closure objectives of the closure plan in the case of a closure activity from potentially interested and affected parties, including the competent authority, by using any of the methods	The **30-day public comment period** may be **insufficient for complex or high-risk projects**, such as **fossil fuel extraction, large-scale land-use changes, or projects in climate-sensitive areas**. Communities—especially those in rural areas—often **require more time** to access, understand, and respond to environmental amendment proposals. Section 3(f)-(k) of the **Climate Change Act, 2024** emphasizes the importance of **inclusive decision-making and public**

	provided for in the Act for a period of at least 30 days	**engagement**, particularly for climate-vulnerable communities. **<u>Natural Justice proposes the following amendments to the draft text:</u>** **“***The holder of the environmental authorisation must invite comments on the proposed amendments to the impact management outcomes of the EMPr or amendments to the closure objectives of the closure plan in the case of a closure activity from potentially interested and affected parties, including the competent authority, by using any of the methods provided for in the Act, subject to the following:* ***(a)*** *The public participation period shall be:* *(i)* ***At least 30 days*** *for standard amendments that do not result in significant changes to environmental risks or mitigation measures;* *(ii)* ***At least 60 days*** *for amendments that:* *- Involve* ***high-impact projects*** *(such as mining, fossil fuel extraction, or large-scale land-use changes);* *- May significantly alter the* ***climate resilience, emissions profile, or biodiversity impact*** *of the activity;* *- Affect communities* ***with limited access to information or technical resources****, requiring extended consultation.* ***(b)*** *The final submission must include:* *(i)* ***A summary of public comments received*** *and an explanation of how they were incorporated or addressed;* *(ii)* ***Any objections raised by affected communities*** *and the applicant’s response, where applicable.* ***(c)*** *Where the amendment is of an urgent nature and will* ***reduce environmental harm or improve climate adaptation measures****, the competent authority may allow a* ***shorter public participation period****, provided that:* *(i) The amendment is* ***limited to corrective actions*** *or improvements to impact management measures;*

		(*ii) The change does not increase the project's environmental or climate-related risks.* *(d) The manner in which the updated EMPr or Closure Plan amendments are reviewed and approved shall ensure alignment with the principles of risk-based decision-making, the duty of care under NEMA, and the just transition objectives of the Climate Change Act, 2024."*
Amendment of Regulation 39(2)	Sub regulation (1) does not apply in respect of - (a) linear activities (b) an application for- (i) mining activities; (ii) the expansion of prospecting, exploration, mining or production operation; or (iii) an activity using fracturing technology; (c) strategic integrated projects as contemplated in the Infrastructure Development Act 2014; and (d) activities proposed on coastal public property (3) Where the activity is proposed to be undertaken on coastal public property, the proponent must, before applying for an environmental authorisation in respect of the activity, notify the relevant organ of state responsible for managing any part of the coastal public property	The exemptions for mining, fracturing technology, and strategic integrated projects may undermine land tenure rights, particularly for customary landowners and coastal communities who could be affected by large-scale developments without their consent. Section 25 of the Constitution and IPILRA protect property rights including customary and communal property land rights, therefore requiring fair procedures when land is being altered. Furthermore, s 3(f)-(h) of the Climate Change Act emphasize inclusive and participatory decision making, ensuring affected communities are consulted before high-impact developments. Lastly, section 2(4)(f) of NEMA states that decisions affecting the environment must take into account the interests and needs of affected communities. It is suggested that this regulation propose an amendment to sub regulation 1 which requires alternative public engagement processes for exempted activities to ensure community participation and compensation measures before environmental authorization is granted. <u>Natural proposes the following amendments to the draft text</u>: *Regulation X of the Regulations is hereby substituted for the following regulation:* *(1) If the proponent is not the owner or person in control of the land on which*

		the activity is to be undertaken, the proponent must, before applying for an environmental authorisation in respect of such activity, obtain the written consent of the landowner or person in control of the land to undertake such activity on that land, subject to the following: *(a) Where landowner consent is not obtainable due to disputed ownership or customary land tenure arrangements, the proponent must:* • *Conduct a public consultation process in accordance with the procedures outlined in NEMA and the Climate Change Act, 2024.* • *Provide an alternative dispute resolution mechanism, where applicable, in cases of competing land claims.* *(b) The requirement for written landowner consent does not apply in respect of—* *(i) Linear activities;* *(ii) An application for—* *- Mining activities;* *- The expansion of prospecting, exploration, mining, or production operations; or* *- An activity using fracturing technology;* *(iii) Strategic Integrated Projects, as contemplated in the Infrastructure Development Act, 2014, provided that:* *- The relevant affected communities are notified and consulted before an environmental authorisation is granted.* *(iv) Activities proposed on coastal public property, provided that the proponent complies with the notification requirements in sub-regulation (3).* *(3) Where the activity is proposed to be undertaken on coastal public property, the proponent must, before applying for an environmental authorisation in respect of the activity, notify the relevant organ of state responsible for managing any part of the coastal public* property,

		and where applicable, engage affected communities and traditional authorities through a transparent public consultation process.
Insertion of regulation 47A	The holder of an environmental authorisation must make available the environmental authorisation, approved EMPr and closure plan in the case of a closure activity, audit reports including the environmental audit report contemplated in regulation 34, and all compliance monitoring reports for inspection and copying- (a) at the site of the authorised activity; (b) to anyone on request; and (c) where the holder of the environmental authorisation has a website, on such publicly accessible website	Full disclosure of environmental compliance reports ensures public accountability and allows communities to monitor environmental impacts – particularly for high risk activities like mining, fossil fuel extraction, or large scale land development. The insertion of this regulation would also benefit the interests of the general public if it resulted in further strengthening transparency by mandating proactive disclosure for high risk projects especially. **Natural Justice proposes the following amendments to the proposed draft text insertion:** *"The holder of an environmental authorisation must make available the environmental authorisation, approved EMPr and closure plan in the case of a closure activity, audit reports including the environmental audit report contemplated in regulation 34, and all compliance monitoring reports for inspection and copying, subject to the following:* ***(a)*** *At the site of the authorised activity:* *(i) A summary of* ***key environmental compliance obligations*** *must be displayed* ***in an accessible location*** *at the project site.* *(ii) Full reports must be* ***available for inspection*** *at the site upon request, provided that* ***sensitive business or security-related information may be redacted*** *in accordance with* ***PAIA, 2000****.* ***(b)*** *To anyone on request:* *(i) The holder of the environmental authorisation must provide* ***public access to environmental compliance reports*** *upon request, except where disclosure would compromise* ***legally protected***

		confidential business information*.* *(ii) In the case of* ***high-risk activities*** *(such as mining, fossil fuel extraction, and large-scale industrial operations), all reports must be provided* ***without redaction, except where justifiable under PAIA****.* **(*c*)** *Where the holder of the environmental authorisation has a website:* *(i) The* ***full environmental authorisation, approved EMPr, closure plan, and summary audit findings*** *must be published on a* ***publicly accessible website****.* *(ii) Where a project* ***significantly impacts climate resilience, emissions, or biodiversity****, all compliance reports must be* ***updated at least annually*** *and made publicly available.* ***(d)*** *The competent authority may, in cases where disclosure presents a* ***public interest concern****, require additional transparency measures, including:* *(i)* ***Public notice and consultation processes*** *before approval of major compliance amendments.* *(ii)* ***Disclosure of real-time environmental monitoring data*** *for high-risk activities impacting air, water, or soil quality."*
Amendment of regulation 54A	(b) a right, permit or exemption was required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) for- (i) prospecting or exploration of a mineral or petroleum resource; or (ii) extraction and primary processing of a mineral or petroleum resource, and such right, permit or exemption has been obtained, and activities authorised in such environmental authorisation, right, permit or exemption commenced after 8 December 2014, such environmental authorisation, right, permit or exemption is	This suggested amendment attempts to grant automatic recognition of environmental authorisations, rights, permits, or exemptions obtained before 8 December 2014, effectively allowing projects to bypass updated environmental and climate related regulations introduced after that date. NEMA's duty of care principle requires continuous monitoring and compliance with evolving environmental standards, meaning older approvals should be reassessed to align with current best practices. Furthermore, the Paris Agreement(ratified by South Africa in 2016) commits the country to progressive environmental governance,

	regarded as fulfilling the requirements of the Act: Provided that where an application for an environmental authorisation was refused or not obtained in terms of the Act for activities directly related to prospecting, exploration or extraction of a mineral or petroleum resource, including primary processing, this sub regulation does not apply	meaning exemptions based on outdated standards may be inconsistent with national commitments (NDC). **<u>Natural Justice proposes the following amendment to the draft text</u>**: *Regulation 54A of the Regulations is hereby substituted for the following regulation:* *(1) Where, prior to 8 December 2014—* *(a) Environmental authorisation was required for activities directly related to—* *(i) Prospecting or exploration of a mineral or petroleum resource; or* *(ii) Extraction and primary processing of a mineral or petroleum resource;* *and such environmental authorisation has been obtained; and* *(b) A right, permit, or exemption was required in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) for—* *(i) Prospecting or exploration of a mineral or petroleum resource; or* *(ii) Extraction and primary processing of a mineral or petroleum resource;* *and such right, permit, or exemption has been obtained, and activities authorised in such environmental authorisation, right, permit, or exemption commenced after 8 December 2014, such environmental authorisation, right, permit, or exemption is regarded as fulfilling the requirements of the Act, subject to the following conditions:* *(i) Compliance with Updated Environmental and Climate Regulations:* *The holder of such an environmental authorisation, right, permit, or exemption must demonstrate continued compliance with the requirements of the Climate Change Act, 2024, NEMA, and relevant sectoral regulations.* *A mandatory environmental review shall be conducted within three years from the date of promulgation of these*

		regulations to assess alignment with updated climate and environmental standards *(ii) Environmental Auditing and Adaptative Management* *All pre-2014 authorisations must be subject to periodic environmental and climate impact audits, to be submitted to the competent authority at least every five years* *If an environmental audit reveals that the project poses significant climate or environmental risks, the competent authority may require the proponent to implement mitigation measures or reassess the project's compliance status* *(iii) Projects in Climate Sensitive or High Risk Areas:* *Activities operating in high emission sectors, water stressed regions, or ecologically sensitive areas must conduct an updated Environmental Impact Assessment to determine compliance with the latest environmental and climate change mitigation standards* *(iv)Exclusion for Previously Rejected Applications* *Where an application for environmental authorisation was refused or not obtained under the Act for activities related to prospecting, exploration, extraction, or primary processing of a mineral or petroleum resource, this sub regulation does not apply*
Amendment of Listing Notice 1	Listing Notice 1 is hereby amended- (a) by the insertion, in subparagraph (1) of paragraph 2 after the definition of Financial Provisioning Regulations" of the following definitions "fracturing" means an intervention	The removal of the definition "hydraulic fracturing" and its replacement with "fracturing" could create regulatory ambiguity and potentially weaken environmental safeguards, particularly for activities involving high-pressure fluid injections into underground rock

	performed on a well to increase production by improving the flow of hydrocarbons from the drainage area int the well bore and includes refracturing" which previously referred to "'hydraulic fracturing' means a well stimulation technique in which rock is fractured by a pressurised liquid, which process involves the high-pressure injection of fracturing fluids into a wellbore to create cracks in the deep-rock formations through which natural gas, petroleum, and brine will flow more freely" (b) y the deletion, in subparagraph (1) of paragraph 2, of the definition of "hyrdraulic fracturing" (c) by the deletion, in subparagraph (1) of paragraph 2, of the definition of "mining application" which previously referred to means an application for an environmental authorisation for a permission, right, permit, or consent required in terms of the Mineral and Petroleum Resources Development Act and includes hydraulic fracturing and reclamation;	formations. NEMA's precautionary principle (Section 2(4)(a) requires risk-averse and cautious environmental decision making, particularly when scientific uncertainty exists regarding environmental harm. Furthermore, South Africa's current moratorium on Hydraulic Fracturing was originally introduced due to concerns about water contamination, seismic risks, and biodiversity impacts, which remain relevant. Natural Justice recommends that the current draft text retain the definition of "hydraulic fracturing" alongside the new definition of "fracturing". Ensuring that all forms of well stimulation remain explicitly regulated under environmental laws **Natural Justice proposes the following amendments to the draft text:** *Listing Notice 1 is hereby amended-* *(a) By the insertion, in subparagraph (1) of paragraph 2 after the definition of "Financial Provisioning Regulations", of the following definitions:* *"fracturing" means ant well stimulation technique performed to increase hydrocarbon production by enhancing permeability in the rock formation, including but not limited to hydraulic fracturing, acid fracturing, gas fracturing and refracturing techniques* *"hydraulic fracturing" means a well stimulation technique in which high pressure fracturing fluids are injected into a wellbore to create cracks in deep rock formations, enhancing the flow of natural gas, petroleum, or other fluids* *(b) By retaining the definition of "hydraulic fracturing' and integrating it under the broader definition of "fracturing" to ensure regulatory oversight of all well stimulation methods.*

		(c) By retaining and modifying the definition of "mining application" in subparagraph (1) of paragraph 2, as follows: *"mining application" mean an application for an environmental authorisation for a permission, right, permit, or consent required under the Mineral and Petroleum Resources Development Act, including those for hydraulic fracturing, refracturing, gas fracturing, reclamation, and any other well stimulation techniques that may pose environmental risks"*
Amendment to Appendix 1: Activity 20	By the substitution for activity 20 of the following activity: "Any activity including the operation of that activity which requires a prospecting right in terms of section 16 o the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the prospecting right excluding where- (i) the prospecting includes the removal and disposal of a mineral that requires a permission in terms of section 20(2) of the Mineral and Petroleum Resources Development Act, in which case activity 19 of Listing Notice 2 will apply"	The substitution of Activity 20 and its exclusion for certain prospecting activities may weaken environmental oversight, allowing prospecting operations that remove and dispose of minerals to bypass stricter environmental assessment processes under Listing Notice 2. The Climate Change Act, 2024 emphasizes integrated environmental governance, requiring all extractive activities to be assessed for climate and environmental risks. Given this Natural just proposes that this provision maintain comprehensive environmental assessment requirements for all prospecting activities including those requiring section 20(2) permissions, rather than shifting them to a separate regulatory framework that may potentially offer less stringent oversight. As an alternative, it is proposed that the provision could retain the intended streamlining of regulatory requirements, nut ensure that all high-risk prospecting activities (e.g involving hydraulic fracturing or coastal zone prospecting) remain subject to stricter Listing Notice 2 requirements. **Natural Justice proposes the following amendments to the draft text:**

		"By substitution for activity 20 of the following activity: *Any activity, including the operation of that activity, which requires a prospecting right in terms of section 16 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the prospecting right, subject to the following conditions:* *(i) Where the prospecting includes the removal and disposal of a mineral that requires a permission in terms of section 20(2) of the Mineral and Petroleum Resources Development Act, Activity 19 of Listing Notice 2 shall apply provided that:* *Additional environmental impact assessments shall b required for prospecting activities in ecologically sensitive or water scarce regions, including coastal ones, wetlands, and biodiversity hotspots.* *Any prospecting activities that involve hydraulic fracturing, deep-sea mineral exploration, or other high risk extraction methods must comply with more stringent Listing Notice 2 regulations, regardless of the type of mineral being prospected.*
Amendment to Appendix 1: Activity 21C	Any activity including the operation of that activity associated with an onshore seismic survey which requires an exploration right in terms of section 79 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of2014, required to exercise the exploration right, excluding- (a) any desktop study; (b) any aerial survey; and (c) a hydraulic fracturing activity which is included in activity 20A in	The proposed substitution potentially has the effect of diminishing robust environmental impact assessments under Listing Notice 2 which necessitate necessary oversight over high risk exploration activities that could lead to biodiversity disruption and increased seismic activity through aerial surveys or hydraulic fracturing activities. Irrespective of some activities being considered minimally invasive such as desktop studies or aerial surveys, the Climate Change Act, 2024 requires that activities that result in or lead to exploration and extraction activities

	Listing Notice 2 of 2014, in which case that activity applies	must align with South Africa's sectoral emission targets, meaning seismic surveys through aerial surveys or hydraulic fracturing, which can lead to large scale fossil fuel extraction, must be subject to stringent climate and environmental scrutiny. **Natural Justice proposes the following amendments to the draft text:** *"By substitution for the following activity:* *Any activity, including the operation of that activity, associated with an onshore seismic survey that requires an exploration right in terms of section 79 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the exploration right, subject to the following:* *(a) Any desktop study remains excluded.* *(b) Any aerial survey remains excluded.* *(c) Hydraulic fracturing activities are regulated separately under Activity 20A of Listing Notice 2 of 2014* *(d) Any onshore seismic survey that involves ground-based techniques such as vibrosis, explosive charges, or other subsurface disturbance methods shall*: *Be subject to an Environmental Impact Assessment under Listing Notice 2 if conducted in ecologically sensitive areas, groundwater recharge zones or communities with existing water scarcity issues.* *Require a climate risk assessment under the Climate Change Act, 2024, to determine the project's potential contribution to fossil fuel expansion and greenhouse gas emissions.* *Be subject to public consultation requirements to assess potential social*

		and environmental justice concerns before authorisation.
Amendment to Appendix 1: Activity 21H	By insertion, after activity 21F, of the following activities: An offshore seismic survey which requires an exploration right in terms of section 79 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as containing in this Listing Notice or in Listing Notice 3 of 2014, required to exercise the exploration right"	The inclusion of offshore seismic surveys in the Listing Notice without prescribing specific environmental impact assessment requirements, may have the potential to not provide sufficient safeguards against the negative effects of seismic blasting on marine ecosystems and coastal communities. Section 2(4)(a) of NEMA incorporates the precautionary principle, requiring heightened environmental scrutiny for activities with uncertain but potentially severe environmental impacts. The Marine Spatial Planning Act, 2018 also recognizes the importance of sustainable ocean governance and the need to protect marine biodiversity from extractive and disruptive activities in areas overlapping with ecosystem sensitive marine biodiversity areas or critical biodiversity areas **<u>Natural Justice proposes the following amendments to the draft text:</u>** "By the insertion, after activity 21F, of the following activity: *An offshore seismic survey which requires an exploration right in terms of section 79 of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice, or in Listing Notice 3 of 2014, required to exercise the exploration right, subject to the following conditions:* *(a) A full lifecycle environmental impact assessment shall be conducted for offshore seismic surveys, including:* - *An assessment of potential harm to marine biodiversity, fisheries, and ecosystem services.* - *A socio economic impact*

		study on affected coastal communities and small-scale fishers - *A cumulative impact assessment of offshore seismic surveys and fossil fuel exploration in South African waters* *(b) The seismic survey shall comply with the Marine Spatial Planning Act, 2018, ensuring that exploration activities:* - *Do not interfere with marine protected areas or ecologically sensitive zones* - *Are aligned with South Africa's long term biodiversity conservation strategies under the CBD and its Kuning Montreal Global Biodiversity Framework (GBF) commitments* *(c) Affected stakeholders, including coastal communities, small scale fishers, and marine conservation groups must be consulted before granting of environmental authorisation.* *(d) Any offshore seismic survey must include climate risk and just transition considerations in compliance with the Climate Change Act, 2024, assessing its: - Alignment with national carbon reduction targets* - *Potential to contribute to or hinder South Africa's energy transition away from fossil fuels.* (e) *Seasonal restrictions shall be applied where necessary to avoid disruptions to marine life during key breeding and*

		migration periods.
Amendment to Appendix 1: Activity 66A	By the substitution for activity 66A of the following activity: The expansion and related operation of hydraulic fracturing, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3of 2014, required for hydraulic fracturing expansion and related operation	The broad substitution of Activity 66A may fail to strengthen environmental oversight for hydraulic fracturing (fracking) expansion, potentially allowing expanded fracking operations without adequate environmental scrutiny. This is particularly concerning given the well documented risks of water contamination, air pollution, seismic activity, and greenhouse gas emissions. Fracking has been recorded to be water intensive and poses significant risks to water scarce regions in South Africa, potentially conflicting with water security policies and Section 24 of the Constitution, which guarantees the right to an environment that is not harmful to health or well-being. **<u>Natural Justice proposes the following amendments to the draft text:</u>** *By the substitution for Activity 66A of the following activity:* *"The expansion and related operation of hydraulic fracturing, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required for hydraulic fracturing expansion and related operation, subject to the following conditions:* *(a) Environmental and Climate Impact Assessments:* - A comprehensive Environmental Impact Assessment must be conducted before the expansion of hydraulic fracturing operations, assessing: - *Cumulative climate impacts and greenhouse gas emissions, in compliance with the Climate Change Act, 2024* - *Impacts on groundwater and surface water resources,*

		particularly in water scarce or ecologically sensitive areas - *Seismic risk assessments, ensuring that fracking expansion does not contribute to increased geological instability* *(b) Public Participation and Social Impact Assessment:* *- Affected communities, including rural landowners, small-scale farmers, and indigenous groups, must be consulted before granting environmental authorisations for fracking expansions* (*c) Just transition and Energy Planning Considerations:* - *Any proposed expansion of hydraulic fracturing must be reviewed in the context of South Africa's energy transition strategy, ensuring that:* *- It aligns with sectoral decarbonization targets under the Climate Change Act, 2024* - *It does not undermine renewable energy development and just transition commitments* - *(d) Water Use Restrictions:* - *Expansion of hydraulic fracturing shall not be permitted in high risk water scarce areas unless:* - *A sustainable water management plan is approved, ensuring that fracking operations do not deplete or contaminate local water supplies.* - *Compliance with South Africa's National Water Act,*

		1998, and climate adaptation policies is demonstrated.

Amendment to Appendix 1: Activity 66D	By insertion after activity 66A of the following activities:
	
	The expansion of an onshore seismic survey which does not require a permission, right or permit in terms of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required for such expansion.
		The insertion of this activity without requiring a right, permit, or permission under the Mineral and Petroleum Resources Development Act may create a regulatory gap, allowing certain onshore seismic surveys bypass environmental scrutiny. It has been reported that seismic surveys have been linked to environmental disturbances, such as soil destabilization, water table disruptions, and community displacement, and should not be expanded with proper environmental assessments and consultation. Natural Justice recommends that perhaps low impact seismic survey expansions to proceed with minimal regulation, but require full environmental assessments for surveys conducted in ecologically sensitive areas, water scarce regions, densely populated, or areas designated for conservation.
		
		<u>Natural Justice proposes the following amendments to the draft text:</u>
		
		*"By insertion, after activity **66A**, of the following activity:*
		
		"*The expansion of an onshore seismic survey which does not require a permission, right, or permit in terms of the Mineral and Petroleum Resources Development Act, as well as any other applicable activity as contained in this Listing Notice or in Listing Notice 3 of 2014, required for such expansion, subject to the following conditions:*
		(a) Risk-Based Environmental Impact Assessment (EIA) Requirements:
		• *A **full EIA shall be required** if the seismic survey:*
		    o *Is conducted in **protected areas, water-sensitive regions, or** biodiversity hotspots.*
		    o *Uses high-impact*

		techniques such as explosive charges, deep seismic testing, or underground shockwave technology.
		• *A Basic Assessment Report (BAR) shall be required for all other seismic survey expansions, ensuring that climate, social, and ecological impacts are considered.*
		(b) Public Participation and Community Consultation:
		• *Where the seismic survey affects communal land, agricultural zones, or indigenous territories, a public participation process must be undertaken before expansion is approved.*
		• *Landowners, affected communities, and relevant environmental authorities must be notified and consulted prior to the commencement of any expansion.*
		(c) Climate and Just Transition Considerations:
		• *All seismic surveys conducted for fossil fuel exploration purposes shall be subject to a climate impact review under the Climate Change Act, 2024, assessing:*
		  o *The potential carbon footprint and greenhouse gas emissions impact of subsequent extraction activities.*
		  o *Whether the survey aligns with South Africa's energy transition and just transition policies.*
		(d) Environmental Safeguards and Mitigation Measures:
		• *Seismic surveys must not disrupt groundwater supplies,* ***cause*** *excessive noise pollution, or* result in habitat fragmentation.
		• Where significant environmental risks are identified, the

		competent authority may impose additional mitigation measures or deny the expansion request.
Amendment to Appendix 1: Listing Notice 2	Listing Notice 2 is hereby amended- (a) by the insertion, in subparagraph (1) of paragraph 2 after the definition of Financial Provisioning Regulations" of the following definitions "fracturing" means an intervention performed on a well to increase production by improving the flow of hydrocarbons from the drainage area int the well bore and includes refracturing" which previously referred to "'hydraulic fracturing' means a well stimulation technique in which rock is fractured by a pressurised liquid, which process involves the high-pressure injection of fracturing fluids into a wellbore to create cracks in the deep-rock formations through which natural gas, petroleum, and brine will flow more freely" (b) y the deletion, in subparagraph (1) of paragraph 2, of the definition of "hyrdraulic fracturing" (c) by the deletion, in subparagraph (1) of paragraph 2, of the definition of "mining application" which previously referred to means an application for an environmental authorisation for a permission, right, permit, or consent required in terms of the Mineral and Petroleum Resources Development Act and includes hydraulic fracturing and reclamation;	The comments raised above regarding amendments to Listing Notice 1 through the insertion of definitions pertaining to "fracturing" and "mining application" apply in this context as well and will not be repeated here. Natural Justice"s proposal for revision of the draft text as outlined for Listing Notice 1, is repeated here as well.
Amendment of Listing notice 3	Listing Notice 3 is hereby amended- (a) by the deletion of the definition of "mining application"	The comments raised above regarding amendments to Listing Notice 1 through the insertion of definitions pertaining to "fracturing" and "mining application" apply in this context as well and will not be repeated here.

		Natural Justice's proposal for revision of the draft text as outlined for Listing Notice 1, is repeated here as well.

Conclusion:

To ensure that amendments to environmental regulations align with **South Africa's constitutional, environmental, and climate commitments**, the following recommendations are proposed. These recommendations seek to strengthen environmental oversight, close regulatory loopholes, ensure public participation, and align resource governance with the Just Transition and Climate Change Act, 2024. Some of the proposed amendments significantly weaken public participation rights, and indigenous land rights, creating legal conflicts with the Constitution, international law, and judicial precedent. The most concerning aspects include:

- Regulation 39(2) amendments, which eliminate consent requirements for mining, fracking, and coastal developments.
- Listing Notice 1 changes, which downgrade seismic survey assessments, limiting public scrutiny of fossil fuel projects.
- Failure to align with South Africa's climate obligations, contradicting the Climate Change Act, 2024.
- Lack of safeguards for coastal and indigenous communities, undermining customary land and ocean rights.

Below is a summary of key recommendations by Natural Justice:

1. **Strengthen Environmental Oversight and Risk-Based Regulation:**

   - To ensure that **high-risk activities** undergo proper environmental scrutiny and do not bypass impact assessments:

     1..1. Mandate Environmental Impact Assessments (EIAs) for all high-risk activities, including:
     - Hydraulic fracturing (fracking) and any well stimulation techniques.
     - Offshore and onshore seismic surveys linked to fossil fuel exploration.
     - Large-scale mining and resource extraction projects.
     - Activities in water-scarce, biodiversity-sensitive, or climate-vulnerable areas.

     1.2. Introduce a risk based regulatory framework where:
     - High-risk activities require full scoping and EIAs and climate risk assessments
     - Moderate-risk activities require a Basic Assessment Report with clear conditions
     - Low-risk activities (e.g, scientific geological surveys linked to scientific study purposes) undergo simplified regulator procedures.

     1.3. Require cumulative impact assessments for projects that contribute to climate change, biodiversity loss, and water depletion.

1.4. Ensure all regulatory definitions remain precise and unambiguous to prevent extractive industries from exploiting regulatory gaps

2. Close Regulatory Gaps and Prevent Weakening of Protections

2.1. To avoid the unintended relaxation of environmental controls on extractive industries

- Retain explicit definitions of regulated activities (e.g. distinguishing "hydraulic fracturing" from "fracturing'') to prevent regulatory ambiguities.
- Ensure that activities previously requiring permits under the Mineral and Petroleum Resource Development Act (MPRDA) are not exempted from oversight due to reclassification or removal from listing notices
- Prohibit self-regulation by companies in extractive industries- environmental compliance must be independently verified by competent authorities
- Integrate stricter compliance monitoring and post- approval auditing to ensure that environmental obligations are met throughout a project's lifecycle.

3. Strengthen Public Participation Social Safeguards:

3.1. To enhance democratic decision-making and environmental justice:

- Extend public participation periods to at least 60 days for high-risk projects, particularly for:
- Hydraulic fracturing and deep-sea mining.
- Seismic surveys in ecological sensitive areas.
- Mining operations affecting water-scarce communities.

3.2. Ensure full disclosure of environmental authorisations, impact assessments, and compliance reports for public review, in mediums/platforms that are easily accessible for interested and affected parties and communities, as well as in languages that are understood given language preferences.

3.3. Require community consultation and consent before project approvals in cases where:

- Land-use changes could affect indigenous, rural, or communal landowners.
- Seismic activities pose risks to groundwater, biodiversity, or agricultural activities.
- The project has potential health or safety risks for local populations.

3.4. Mandate social impact assessments to assess how extractive activities will affect livelihoods, water access, and long-term community sustainability within a complete life cycle assessment of the relevant projects.

4. Align all regulatory amendments with the Climate Change Act and Just Transition Goals

4.1. To ensure South Africa's climate commitments are not undermined by fossil fuel expansion:

- Require a climate risk and just transition assessment for all projects linked to hydrocarbon exploration, fracking, and large-scale mining
- Ensure all approvals align with national decarbonization targets by:

- Restricting approvals for projects that significantly increase South Africa's carbon footprint.
- Complying with sectoral emission targets allocated per sector by the Climate Change Act.

- Introduce water-use restrictions for fracking and mining in water scarce regions to prevent over-extraction or contamination.
- Align all offshore exploration and extractive projects with marine and coastal protection laws, ensuring compliance with the Marine Spatial Planning Act, 2018 and the Kunming Montreal Global Biodiversity Framework.
- Require fossil fuel projects to demonstrate compatibility with South Africa's Just Energy Transition before approval.

5. Improve Regulatory Efficiency Without Compromising Environmental Protections:

5.1. To balance economic considerations with environmental sustainability:

- Ensure that compliance and mitigation measures are practical and enforceable, avoiding vague regulatory requirements that cannot be effectively implemented by either the state or project proponents.
- Encourage technology-based environmental monitoring (e.g. satellite tracking, real-time emission monitoring from leaks) to improve enforcement.

6. Decision-makers must ensure that regulatory amendments do not weaken environmental oversight, reduce public participation, or undermine South Africa's climate and just transition commitments. Instead, they should implement a risk-based, transparent, and socially just approach that balances economic development with strong environmental and social protections.

7. We are willing to make more detailed submissions to the Department on any of the issues raised above should this be useful. We thank you again for the opportunity to comment on the Draft Regulations and trust that our comments will be addressed.

Senior Programme Officer: Allan Basajjasubi

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