



Date: 09 September 2022

TO: **Minister of Forestry, Fisheries and the Environment**

Honorable Barbara Creecy

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AND TO: **Deputy Director-General: Regulatory Compliance and Sector Monitoring**

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Dear Minister Creecy

RE: INCLUSION OF SHIP-TO-SHIP BUNKERING AS A LISTED ACTIVITY IN THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014

Introduction:

1. We write to you on behalf of the Biodiversity Law Centre, BirdLife South Africa, and SANCCOB, to urgently address the need to have ship-to-ship ("STS") bunkering

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included as a Listed Activity in the Environmental Impact Assessment (“EIA”) Regulations, 2014.¹

2. The Biodiversity Law Centre 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. The Centre’s mission is to use the law to protect, restore and preserve indigenous ecosystems and species in Southern Africa. By supporting civil society organisations, and local and indigenous communities in their efforts to safeguard their environments, the Centre seeks to advance its vision of flourishing indigenous species and ecosystems that support sustainable livelihoods in Southern Africa.
3. BirdLife South Africa is a registered non-profit organisation, the mission of which is to conserve birds, their habitats and biodiversity through scientifically-based programmes, through supporting the sustainable and equitable use of natural resources, and by encouraging people to enjoy and value nature.
4. SANCCOB is a registered non-profit organisation with the primary objective to reverse the decline of seabird populations through the rescue, rehabilitation and release of ill, injured, abandoned and oiled seabirds particularly endangered species such as the African Penguin.
5. We acknowledge and appreciate your concern for the plight of the African Penguin and the processes that your Department has put in place towards averting threats to this species. However, we are deeply concerned about the impacts that STS bunkering activities are having on South Africa’s penguins and other biodiversity.
6. STS bunkering is not currently a Listed Activity under the EIA Regulations, 2014, and as such, has to date been authorised in the absence of a comprehensive environmental impact assessment (“EIA”) being conducted. Operation-specific EIAs (encompassing more than a risk assessment) would ensure that the actual and potential impacts on the environment, socio-economic conditions and cultural heritage of STS bunkering are identified, predicted, and evaluated – in the same manner that they are for other potentially problematic developments in the marine environment. This is critical to ensuring that STS bunkering activities, if authorised, are properly managed, and impacts mitigated through the imposition of appropriate conditions.
7. We are of the view that including STS bunkering as a Listed Activity in the EIA Regulations would bring the activity within the ambit of integrated environmental management, ensuring that all impacts associated with the activity are properly assessed, that interested and affected parties have an opportunity to participate in the

¹ GN R982 in *Government Gazette* 38282 of 4 December 2014, as amended.

process, and that the competent authority has all relevant information at hand when deciding whether or not to authorise further STS bunkering activities.

8. As it currently stands, the regulatory regime applicable to STS bunkering falls far short of the rigorous EIA process contemplated by the EIA Regulations. It not only fails to ensure all environmental impacts are identified and assessed, affording the competent authority the opportunity to impose conditions to ensure that such impacts are monitored and mitigated, but, crucially, it deprives interested and affected parties the opportunity to participate in a decision-making process in relation to activities that may have (and are having) catastrophic impacts on the receiving environment.
9. We therefore request that you amend the Listing Notices to the EIA Regulations, 2014, to include STS bunkering and related activities. Our reasons for this request are explained further below.

Background:

10. “Bunkering” means the supply of fuel for use by ships and includes the shipboard logistics of loading fuel and distributing it among available bunker tanks and “ship-to-ship operations” means the transfer of liquid bulk cargo from one vessel to another, also known as “Lightering”. There is no distinction between “Lightering” and STS operations.² Our concern relates to bunkering that occurs offshore between vessels, which we refer to herein as “STS bunkering.”
11. STS bunkering occurs predominantly in Algoa Bay (currently the only location at which long-term bunker operations have been approved). The first operator, Aegean Bunkering Marine Services, was approved by the South African Maritime Safety Authority (“SAMSA”) and licenced by the Transnet National Ports Authority (“TNPA”) to conduct STS bunkering operations in 2016. This application was followed by further approval and licencing of South African Marine Fuels in 2018, and Heron Marine in 2019.
12. We are aware that a moratorium currently prevents further licences for STS bunkering in Algoa Bay being awarded by SAMSA and TNPA, but that the moratorium is in place pending the completion of an environmental risk assessment (“ERA”) by the TNPA.³ However, a once-off, general risk assessment can never be a replacement for a rigorous assessment of project-specific impacts related to the carrying out of a particular activity in a particular location. Moreover, the ERA will be limited to Algoa Bay and not cover other regions of the coast into which STS bunkering operations are expected to expand.
13. As you know, Algoa Bay is an area of rich biodiversity and ecological sensitivity:

² Draft Bunkering Code of Practice, September 2022

³ <https://easytenders.co.za/tenders/request-for-proposal-tnpa-2022-06-0489-5185-rfp-81479>

- 13.1. it includes the Addo Elephant Marine Protected Area, which was declared in 2019 for the purpose of protecting a linked system of shore, estuarine, bay, island and shelf ecosystems and their associated biodiversity and ecosystem processes, to facilitate fisheries management, for the protection of threatened species and the physical features and ecological processes on which they depend and finally to protect and regulate a scenic area and its marine wildlife to support sustainable nature-based tourism;⁴
 - 13.2. it includes the Algoa to Amathole (Offshore of Port Elizabeth) Ecologically and Biologically Significant Area,⁵ designated as such for its unique ecological features including rare habitat types, an important benthic and pelagic area that supports important ecological processes, seabird breeding and foraging areas, fish spawning and nursery areas and areas used by endangered leatherback turtles;
 - 13.3. it comprises the Algoa Bay Islands and Addo Elephant National Park Important Bird Area, where fourteen seabird, several shorebird and 33 terrestrial bird species have been recorded, and where eight seabird species currently breed;⁶
 - 13.4. it was declared a Hope Spot by Dr Sylvia Earle in 2014;⁷ and
 - 13.5. in 2021, Algoa Bay was declared a Whale Heritage Site. Since 2018, an annual Welcoming of the Whales Festival is celebrated in June when the first Humpback whales arrive on their migration route from Antarctic feeding grounds. The importance of these beautiful animals for the communities and the need for their conservation in the wild are at the heart of these celebrations. Marine tour operators, conservation projects, private companies, educational institutions, and NGOs come together to engage with and educate the public about the whales living off their coasts, as well as all the other marine life and addressing issues like plastic pollution.
14. Critically, Algoa Bay provides habitats for endangered African Penguins (*Spheniscus demersus*), as well as other endangered seabirds, cetaceans and seals.⁸ Two groups of islands in Algoa Bay, the St Croix Island group and the Bird Island group, together support globally important populations of the endangered African Penguin (*Spheniscus demersus*) and Cape Gannet (*Morus capensis*).⁹ In 2015, Algoa Bay supported 54% of South Africa's population of African Penguin. St Croix Island was the largest colony of this species by a significant margin, contributing 40% of the South African population. Since then, the Algoa Bay population has decreased from 10,906

⁴ GN 757 in *Government Gazette* 24278 of 23 May 2019.

⁵ <https://www.cbd.int/ebsa/>.

⁶ <https://www.birdlife.org.za/iba-directory/algoa-bay-islands-addo-elephant-national-park/>.

⁷ [Algoa Bay Hope Spot - Sustainable Seas Trust \(sst.org.za\)](http://Algoa Bay Hope Spot - Sustainable Seas Trust (sst.org.za)).

⁸ Pichegru et al "Maritime traffic trends around the southern tip of Africa – Did marine noise pollution contribute to the local penguins' collapse?" *Science of the Total Environment* 849 (2022) page 1.

⁹ Pichegru et al, page 2.

pairs to 2,821 pairs¹⁰ and now constitutes 28% of the South African population, with the St Croix colony now being the fourth largest colony in South Africa.

15. As your Department records in the *Draft Biodiversity Management Plan for the African Penguin*¹¹ (“Penguin BMP”) the African Penguin is Africa’s only extant penguin and is endemic to both Namibia and South Africa. The species has suffered an enormous reduction from over one million pairs in the 1920s, to numbers of approximately 10 041 pairs in 2022.¹² It is currently classified as Endangered by the International Union for Conservation of Nature (“IUCN”) and under the Threatened or Protected Marine Species Regulations (“TOPMS”)¹³ published under the National Environmental Management: Biodiversity Act, Act 10 of 2004 (“NEM:BA”).
16. Protecting African Penguins is not just important for the species itself, but for the whole ecosystem of which they are a critical part. As the Penguin BMP notes, African Penguins are considered sentinels of ecosystem health, playing an important role in the functioning of marine ecosystems. Thriving African Penguin colonies will give some indication of the status of other marine top predators that target the same prey and, more broadly, to the relative condition of the marine ecosystem.¹⁴
17. African Penguins face a variety of cumulative pressures, including food scarcity (due to competition with commercial fisheries), breeding habitat modification, human disturbance in colonies, oil spills, disease outbreak, predation, and maritime industries such as oil and gas exploration.¹⁵ Significantly, African Penguin populations on St Croix Island have declined dramatically since the advent of STS bunkering in Algoa Bay. This decline, which stands to affect the ecosystem as a whole, is indicative of the negative impacts that may be suffered by an ecosystem as a result of STS bunkering.

Impacts of STS bunkering

18. STS bunkering activities, if not properly performed, present serious safety, health and environmental risks, including explosions and spillage during transfer, resulting in pollution, loss of biodiversity and ecological disturbances and loss of efficient functioning of the port. Bunkering activities have in particular been shown to have a devastating impact on endangered seabirds in Algoa Bay, especially in relation to African Penguin populations, whose numbers have declined from more than 50 000

¹⁰ Makhado et al “The ongoing decrease of African penguins globally and in South Africa” (2022) page 7.

¹¹ Draft Biodiversity Management Plan for the African Penguin, GN2302 in *Government Gazette* 47061 of 22 July 2022 (“Draft African Penguin BMP”).

¹² Makhado, Crawford, Sherley and Upfold “the ongoing decrease of African Penguins globally and in South Africa, 1989–2022”, Table 1, page 7.

¹³ GN 476 in *Government Gazette* 40875 of 30 May 2017.

¹⁴ Draft African Penguin BMP, page 7.

¹⁵ Draft African Penguin BMP, pages 23 to 31.

breeding pairs in 2004,¹⁶ to a record low of 10 041 pairs in 2022.¹⁷ This is a truly catastrophic decline.

19. The fueling of large vessels such as tankers through bunkering activities increases the likelihood and risk of oil spills and disturbance on marine wildlife. The Penguin BMP notes that “*addressing and mitigating the threat that ship-to-ship bunkering has to [sic] African penguins (and other marine life) requires more focused attention.*”¹⁸ It does not elaborate further on the nature of the ‘attention’ the issue is to receive in the face of so significant a decline.
20. As it is, four devastating oil spills have occurred as a result of STS bunkering operations in Algoa Bay, two of which resulted in significant numbers of oiled wildlife:
21. Whilst we can report on the number of seabirds captured, and treated by local NGOs, it is important to note that there is an unquantifiable impact to marine species caused by hydrocarbon spills that are never recovered, thus we never truly grasp the full magnitude of a spill incident.

Year	STS Fuel Bunkering operator	Receiving vessel	Species and numbers affected
2016	Previously Aegean Oil Petroleum Network, now renamed under Minerva Bunkering	MV Energy Challenger	150 African Penguins
2019	South African Marine Fuels	MV Chrysanthi S	109 African Penguins 13 Cape Gannets 3 Cape Cormorants
2021	Heron Marine	MV Solin	1 African Penguin 3 Cape Gannets Note that it was a stroke of luck that the spill occurred during the annual moult cycle for

¹⁶ Draft African Penguin BMP, page 7.

¹⁷ Makhado, Crawford, Sherley and Upfold “the ongoing decrease of African Penguins globally and in South Africa, 1989–2022”, Table 1, page 7.

¹⁸ Draft Penguin BMP, page 29

			African penguins, thus they were confined to the islands.
2022	Minerva Bunkering	MT Umnenga	No oiled seabirds reported Note that the number of African Penguins on St Croix is now so low that the few remaining individuals could have avoided the slick.

22. There is consequently no doubt that STS bunkering poses a great risk of oil spills that stand to have devastating impacts on marine wildlife.
23. In terms of disturbance faced by marine wildlife as a result of increased shipping, maritime traffic has increased exponentially in Algoa Bay in recent years, particularly since 2016, when STS bunkering operations commenced in Algoa Bay within the defined Port of Ngqura at anchorage (approximately 5km from St Croix Island). The impacts of particularly marine noise pollution have been documented in a groundbreaking new study compiled by L. Pichegru *et al* entitled “*Maritime traffic trends around the southern tip of Africa – Did marine noise pollution contribute to the local penguins' collapse?*”, which has provided the first scientific evidence that an increase in vessel-driven noise after STS bunkering commenced in Algoa Bay in 2016 was significantly associated with the fastest short-term decline of an African Penguin population on record, i.e. 83% decline of the once largest colony at St Croix Island since 2015.¹⁹
24. The study, which assessed the relationship between annual vessel-derived noise estimates and the annual counts of African Penguin breeding pairs using standard linear regression, found as follows.
- 24.1. Increases in maritime traffic in Algoa Bay, and subsequent noise levels emitted, are correlated with the establishment and expansion of STS bunkering operations in the bay.
- 24.2. STS bunkering mainly attracts bulk carriers, which are among the noisiest vessels in transit. It is therefore clear that this activity is a major contributor to the altered anthropophony of the bay.

¹⁹ Pichegru et al “Maritime traffic trends around the southern tip of Africa – Did marine noise pollution contribute to the local penguins' collapse?” *Science of the Total Environment* 849 (2022) page 1.

- 24.3. In the period between 2013 and 2019, the number of African Penguin breeding pairs declined from 7,657 pairs, to 3,638 pairs, a decrease of 52%. The world's largest remaining African Penguin colony, located within 5-15km of the most intense maritime traffic activities in Algoa Bay, therefore more than halved, significantly correlating with the concurrent underwater noise levels in the bay as a result of STS bunkering. This is the greatest short-term decrease of an African Penguin colony on record.²⁰
- 24.4. The intensification of underwater noise levels in the African Penguin's foraging habitat was therefore linked to the initiation and expansion of STS bunkering activities which intensified the maritime traffic in the area. Noise levels were significantly related to the collapse of what had been the world's largest remaining colony of endangered African Penguins.²¹
- 24.5. The impact of underwater noise not only affects African Penguins, but other marine wildlife. High levels of underwater noise levels can directly affect individual animals by decreasing their foraging success, impacting their sensory abilities (e.g. hearing, orientation) and inducing higher stress levels.²²
25. A copy of the study is included under cover hereof.
26. There is consequently no question that STS bunkering activities are having catastrophic impacts on marine biodiversity within Algoa Bay.
27. In addition, impacts on marine biodiversity have cascading impacts on other sectors of the South African economy. Marine wildlife is a critical component of ecotourism in South Africa. This industry generates much revenue and creates many jobs, which stand to be lost if the biodiversity on which the sector depends is compromised. While figures particular to Algoa Bay are lacking, comparable studies have been conducted in relation to the socio-economic benefits of the Boulders Bay African Penguin colony:
- 27.1. the colony generates tourist and resident expenditure of approximately R311 million per annum with ~35% of this amount being spent within Simon's Town;²³
- 27.2. a total of 855 jobs can be associated with the Penguin colony within all parts of Cape Town, with in the order of 250 of these to be found in Simon's Town and surrounds;²⁴

²⁰ Pichegru et al, page 7.

²¹ Pichegru et al, page 7.

²² Pichegru et al, page 7.

²³ Van Zyl and Kinghorn "The Economic Value and Contribution of the Simon's Town Penguin Colony" Technical Report, September 2018, page 17.

²⁴ Van Zyl and Kinghorn "The Economic Value and Contribution of the Simon's Town Penguin Colony" Technical Report, September 2018, page 17.

- 27.3. Penguin-based tourism forms an integral part of the R25 billion Western Cape tourism sector.²⁵
28. Similar findings would undoubtedly be associated with the Algoa Bay colonies, and the broader marine ecotourism industry which depend on thriving marine wildlife.
29. An activity which stands to have so significant an impact on marine wildlife populations, livelihoods and tourism should be subject to the highest level of impact assessment and scrutiny to determine whether or not it should be authorised.

Current regulation of STS bunkering activities

30. The regulation of STS bunkering activities is currently occurring under the auspices of two bodies:
 - 30.1. TNPA under section 80(2) of the National Ports Act, Act 12 of 2005 (“the National Ports Act”) read with Rule 148 of the National Ports Rules;²⁶ and
 - 30.2. SAMSA in terms of section 21 of the Marine Pollution (Control and Civil Liability) Act, Act 6 of 1981 (“the Marine Pollution Act”) and Marine Notice No. 3 of 2016.
31. Rule 148 of the Ports Rules requires that a person who carries out bunkering activities must obtain a licence from TNPA.
32. Section 21 of the Marine Pollution Act provides that no person shall outside a harbour or a fishing harbour and within the prohibited area, transfer any oil or other prescribed harmful substance from any ship or tanker to any other ship or tanker or to an offshore installation or from such offshore installation to any ship or tanker, without SAMSA’s permission. SAMSA is empowered to impose conditions in giving its permission.
33. Marine Notice 3 of 2016 contains the requirements for an application for SAMSA’s permission to conduct a bunker or oil transfer operation outside a port.
34. However, neither of these statutes provides a comprehensive framework (comparable to the EIA Regulations, 2014) for assessing the full range of direct, indirect, and cumulative impacts associated with STS bunkering.
35. The TNPA has a set of standard conditions in relation to safety, health, environment and efficiency which are imposed on bunkering licences.²⁷ However, these conditions are extremely limited, and only relate to pollution as a result of an oil spill, and not the

²⁵ Lewis, Turpie & Ryan “Are African penguins worth saving? The ecotourism value of the Boulders Beach colony” *African Journal of Marine Science* 2012, page 1.

²⁶ GN 255 in *Government Gazette* 31986 of 6 March 2009.

²⁷ Annexure G, Guidelines for Agreements, Licences and Permits in terms of the National Ports Act No. 12 of 2005.

broader impacts (for example, underwater noise) that stand to affect marine wildlife, livelihoods and tourism.

36. SAMSA released a Bunkering Code of Practice²⁸ and an STS Transfer Code of Practice²⁹ for public comment in late 2021. In September 2022, revised versions were published for a second round of comments. Although these Codes are being developed with a view to improving the management of STS bunkering in South Africa, they will not be implemented under the authority of the Department of Forestry, Fisheries and the Environment, and we remain concerned that the drafts as they currently stand do not go nearly far enough in assessing and addressing the full range of environmental impacts associated with STS bunkering. Furthermore, the Codes will not have the force of law, and their implementation cannot be enforced.
37. We note that the most recent version of the Codes include, in Chapter 14, a description of the Environmental Risk Management Plan (“ERMP”) that must accompany an application for SAMSA’s permission to conduct bunkering activities. The Code requires the ERMP to contain, amongst other things:
 - 37.1. a description of the activity and the environment that may be affected;
 - 37.2. a description of the need and desirability of the activity;
 - 37.3. a summary of the issues raised during any local participation processes followed;
 - 37.4. an assessment of the significance, nature, duration, extent, probability and reversibility of the environmental and cumulative impacts and whether these impacts can be mitigated;
 - 37.5. environmental management and mitigation measures that should be taken.³⁰
38. The above language is drawn directly from the EIA Regulations and is clearly indicative of an acknowledgement that STS bunkering activities should be subject to an EIA. This acknowledgement in itself is reason enough to list STS bunkering in the EIA Regulations, such that the activity requires an environmental authorisation before it may be conducted.

Motivation for including STS bunkering in the EIA Regulations, 2014

39. The Minister of Forestry, Fisheries and the Environment is empowered in terms of section 24(2)(a) read with section 24D of NEMA to publish lists of activities which may not commence without an environmental authorisation from the competent authority.

²⁸ Dated October 2021.

²⁹ Dated October 2021.

³⁰ Draft Bunkering Code of Practice, page 70.

40. The purpose of listing activities under NEMA is to bring such activities within the ambit of integrated environmental management and the regulatory framework imposed by NEMA. Integrated environmental management requires:³¹
- 40.1. the integration of NEMA section 2 principles of environmental management into all decisions that may affect the environment;
 - 40.2. the identification, prediction and evaluation of actual and potential impacts on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities;
 - 40.3. ensuring that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them; and
 - 40.4. crucially, ensuring adequate and appropriate opportunity for public participation in decisions that may affect the environment.
41. It is clear that none of the regulatory processes currently applicable to STS bunkering described above comply with principles of integrated environmental management. No provision is made for relevant impact assessments, including specialist assessments, on biodiversity and endangered seabirds, socio-economic impacts, and modelling to determine the effect of emissions and spills from the STS bunkering operations. While the Codes include requirements for an Environmental Risk Management Plan, these fall far short of the level of assessment required by the EIA Regulations. This is wholly inadequate considering the impacts STS bunkering is already having on marine biodiversity in South Africa, and Algoa Bay in particular, as evidenced by the catastrophic decline in African Penguin populations and impacts of oil spills between 2016 and 2022.
42. We are therefore strongly of the view that STS bunkering needs to be included as a Listed Activity under the EIA Regulations in order to bring the activity within the ambit of integrated environmental management in terms of NEMA. By so listing STS bunkering, in addition to enabling the rigorous assessment of the full range of direct, indirect, and cumulative impacts associated with the activity by suitably qualified experts:
- 42.1. interested and affected parties will be afforded the opportunity to participate in the decision whether or not to authorise STS bunkering, which will enable important information to serve before the competent authority in making its decision;
 - 42.2. the competent authority will have an opportunity to impose conditions in relation to the activity, thereby mitigating potential negative impacts associated with STS bunkering (should the activity be authorised) and ensuring the activities

³¹ Section 23, NEMA.

- are conducted with as little risk to marine biodiversity, tourism and livelihoods as possible;
- 42.3. STS bunkering activities, if authorised, would be subject to regular audits in terms of the EIA Regulations, thereby facilitating scrutiny of the holder's compliance with conditions of the environmental authorisation;
 - 42.4. any changes in the nature and / or scope of STS bunkering activities would need to be subject to the amendment process as contemplated in the EIA Regulations, including public participation, which would also increase the degree of scrutiny over such activities;
 - 42.5. an EMPr will need to be compiled which details information on any proposed management, mitigation, protection or remedial measures that will be undertaken to address the environmental impacts that have been identified; and
 - 42.6. the STS bunkering activities, if authorised, will be brought within the ambit of the compliance and enforcement provisions contained in Part 2 of Chapter 7 of NEMA, enabling greater compliance with both NEMA and the conditions of any environmental authorisation issued, and the imposition of significant penalties for any non-compliance.
43. Including STS bunkering as a Listed Activity in terms of the EIA Regulations would also be consistent with South Africa's obligations under international law – in particular, as a Contracting Party to the Convention on Biological Diversity (CBD), the Convention on the Conservation of Migratory Species of Wild Animals (CMS), the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), and the Benguela Current Convention (BCC). For instance, Article 14(1)(a) of the CBD calls for the introduction of appropriate EIA requirements for proposed projects that are likely to have significant adverse effects on biodiversity, and the Convention's Conference of the Parties has explicitly encouraged impact assessments for activities that may have significant adverse impacts on noise-sensitive species.³² The CMS Conference of the Parties has similarly urged that environmental assessments be undertaken on "the introduction of activities that may lead to noise-associated risks for CMS-listed marine species and their prey";³³ and Article 4(2)(b) of the BCC provides that Parties shall "undertake environmental impact assessment for proposed activities that are likely to cause adverse impacts on the marine and coastal environments". Parties to AEWA are required to take measures to restore the African Penguin and various other species of threatened seabirds to a favourable conservation status, and this treaty's International Working Group for Benguela Coastal Seabirds has expressed concern

³² CBD Decision XII/23.

³³ CMS Resolution 12.14.

regarding STS bunkering and agreed that it would be beneficial if this activity required an EIA.³⁴

44. The ecological and socio-economic impacts of STS bunkering should undoubtedly be assessed before approvals to conduct bunkering are granted. For this reason, STS bunkering should be listed as a Listed Activity in terms of the EIA Regulations, and be subjected to the rigorous EIA process contemplated therein before any further bunkering activities are authorised.

Conclusion:

45. It is evident that STS bunkering is already having a significant negative impact on marine biodiversity. It has been the cause of several oil spills in Algoa Bay, and the accompanying increase in underwater noise levels has been shown to be significantly associated with the catastrophic decline of the African Penguin population.
46. Currently, the regulatory framework applicable to STS bunkering is wholly inadequate in terms of assessment and evaluation of environmental impacts, and the imposition of conditions which may mitigate negative impacts. The provisions of the Marine Pollution Act and the National Ports Act provide no mechanism in terms of which environmental impacts may be assessed, and while new Codes of Practice are being developed by SAMSA in collaboration with the TNPA and DFFE, we are of the view that these will simply not go far enough in addressing the environmental impacts of STS bunkering and are in any event not legally enforceable.
47. In the circumstances, we request that STS bunkering urgently be listed as a Listed Activity (Listing Notice 2) in terms of section 24(2)(a) read with section 24D of NEMA, which may not take place without an EIA being conducted, and an environmental authorisation being granted.
48. We would welcome the opportunity to engage with the Minister and her Department in relation to this correspondence.

Yours faithfully,



BIODIVERSITY LAW CENTRE NPC

***Per* Kate Handley**

³⁴ Rolling Work Plan 2021-2025 - AEWA Benguela Coastal Seabirds International Working Group, page 10.